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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-56

IN THE MATTER OF EDNA SMITH,

Appellant.

On Appeal From The
Supreme Court of The
State of South Carolina

JOINT APPENDIX

Jurisdictional Statement Filed July 9,
1977
Probable Jurisdiction Noted October 3,
1977

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Complaint	Oct. 10, 1974
Answer	Oct. 31, 1974
Amended and Supplemental Answer	Mar. 12, 1975
Hearing before the Panel of the Board of Commissioners on Grievances and Discipline	Mar. 20, 1975
Panel Report Recommending Private Reprimand	Oct. 6, 1975
Hearing before the Board of Commissioners on Grievances and Discipline and Oral Issuance of Private Reprimand	Jan. 9, 1976
Opinion of the Supreme Court of South Carolina Issuing Public Reprimand	Mar. 17, 1977
Notice of Appeal	Apr. 15, 1977

* There is no formal docket entry list.

STATE OF SOUTH CAROLINA) BEFORE THE BOARD
) OF COMMISSIONERS
 COUNTY OF RICHLAND) ON GRIEVANCES AND
 DISCIPLINE

In the Matter of:

John W. Williams, Secretary)
 of the Board of Commissioners)
 on Grievances and Discipline,)

Complainant,)

vs.)

COMPLAINT

Edna Smith,)

Respondent.)

Complainant alleges:

I.

The Complainant is the Secretary of the Board of Commissioners on Grievances and Discipline and a duly licensed attorney in the State of South Carolina, and the Respondent is engaged in the practice of law as a duly licensed attorney who resides or maintains an office in the County of Richland, State of South Carolina.

II.

On information and belief the Respondent committed the following act of misconduct or has indulged in the following practice which tends to pollute the administration of justice or to bring the

legal profession or the courts into disrepute:

- A. On or about August 30, 1973, Respondent wrote a letter to Mrs. Marietta Williams of 347 Sumter Street, Aiken, South Carolina, a copy of which is attached, by the terms of which Respondent informed Mrs. Williams that "The American Civil Liberties Union would like to file a lawsuit on your behalf for money against the doctor who performed the operation." Complainant is informed and believes that the foregoing constitutes solicitation in violation of the Canons of Ethics.

WHEREFORE, Complainant prays that the Board of Commissioners on Grievances and Discipline consider these allegations and make such disposition as may be appropriate.

s/ John W. Williams
Complainant

[Verification Omitted]

[Attachment to Complaint]

August 30, 1973

Mrs. Marietta Williams
347 Sumter Street
Aiken, South Carolina 29801

Dear Mrs. Williams:

You will probably remember me from talking with you at Mr. Allen's office in July about the sterilization performed on you. The American Civil Liberties Union would like to file a lawsuit on your behalf for money against the doctor who performed the operation. We will be coming to Aiken in the near future and would like to explain what is involved so you can understand what is going on.

Now I have a question to ask of you. Would you object to talking to a women's magazine about the situation in Aiken? The magazine is doing a feature story on the whole sterilization problem and wants to talk to you and others in South Carolina. If you don't mind doing this, call me collect at 254-8151 on Friday before 5:00, if you receive this letter in time. Or call me on Tuesday morning (after Labor Day) collect.

I want to assure you that this interview is being done to show what is happening to women against their wishes, and is not being done to harm you in any way. But I want you to decide, so call me collect and let me know of your decision. This practice must stop.

About the lawsuit, if you are interested, let me know, and I'll let you know when we will come down to talk to you about it. We will be coming to talk to Mrs. Waters at the same time; she has already asked the American Civil Liberties Union to file a suit on her behalf.

Sincerely,

s/ Edna Smith
Edna Smith
Attorney-at-Law

[The following civil complaint was served on the Secretary of the Board as the answer of Edna Smith to the disciplinary complaint.]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

AMERICAN CIVIL) [Filed Oct. 31,
LIBERTIES UNION and) 1974]
JANE KOE,)

Plaintiffs,)

v.)

O. HARRY BOZARDT, JR.,)
H. HAYNE CRUM, JOSEPH)
O. ROGERS, JR., MARION)
H. KINON, EDWARD M.)
ROYALL, II, GEORGE F.)
COLEMAN, ROBERT A.)
HAMMETT, THOMAS J.)
THOMPSON, COMING B.)
GIBBS, JR., LOWELL W.)
ROSS, FRANK E. HARRISON,)
J. MALCOLM McLENDON, C.)
THOMAS WYCHE, WILLIAM L.)
BETHEA, JOHN B.)
McCUTCHEON, MELVIN B.)
McKEOWN, JR., individu-)
ally and as members of)
the Board of Commis-)
sioners on Grievances)
and Discipline, and)
their successors; and)
the ATTORNEY GENERAL OF)
SOUTH CAROLINA,)

Defendants.)

CIVIL ACTION
NO. 74-1703

COMPLAINT

Jurisdiction

1. This complaint arises under the first and fourteenth amendments of the

Constitution of the United States and 42 U.S.C. § 1983. Jurisdiction is conferred on this court by 28 U.S.C. §§1331, 1343(3), 2201 and 42 U.S.C. §§ 1983 and 1988. The matter in controversy exceeds \$10,000.00 exclusive of interest and costs.

2. This is an action for equitable relief and declaratory judgment of the unconstitutionality of disciplinary procedures instituted against plaintiff Jane Koe by defendants and to prevent deprivation under color of state statute, ordinance, regulation, custom or usage of rights, privileges or immunities secured to plaintiffs by the first and fourteenth amendments of the Constitution of the United States.

3. Plaintiff American Civil Liberties Union (hereinafter "ACLU") is a nationwide non-partisan organization of approximately 250,000 members dedicated solely to the preservation of the liberties safeguarded by the Bill of Rights. During its fifty-four years of existence the ACLU has sought to protect the rights of privacy and equal protection. Plaintiff Jane Koe is over the age of 21 years.

She is a resident and citizen of Richland County, South Carolina. She prosecutes this action under the fictitious name of Jane Koe to protect her privacy and professional reputation.

4. Defendants O. Harry Bozardt, Jr., H. Hayne Crum, Joseph O. Rogers, Jr., Marion H. Kinon, Edward M. Royall, II, George F. Coleman, Robert A. Hammett, Thomas J. Thompson, Coming B. Gibbs, Jr., Lowell W. Ross, Frank E. Harrison, J. Malcolm McLendon, C. Thomas Wyche, William L. Bethea, John B. McCutcheon, and Melvin B. McKeown, Jr., are the duly appointed, elected and acting members of the Board of Commissioners on Grievances and Discipline (hereinafter "Board") pursuant to the Rule on Disciplinary Procedure of the South Carolina Supreme Court. All of the personal defendants are residents and citizens of South Carolina and are sued individually and in their official capacities.

5. The ACLU undertakes to secure attorneys to represent persons without cost or fee or other charge in state and federal courts for denial of constitutional rights through its paid and

retained staff and system of cooperating attorneys. Cooperating attorneys serve without fees or compensation of any kind, and without any expectation thereof.

6. Plaintiff Jane Koe is a duly licensed attorney in the State of South Carolina, is engaged in the practice of law and maintains an office in Columbia, South Carolina. She is associated with the ACLU as a cooperating attorney, is presently acting as an officer of the South Carolina affiliate of the ACLU, and serves in both capacities without fee or pay or any expectation thereof. She does not have and never has had any financial interest or expectation of gain or reward of any kind in connection with correspondence, representations, conversations or dealings of any kind with any person in her capacity as a cooperating attorney or officer of the ACLU.

7. Prior to August 30, 1973, plaintiff Koe was contacted by a Mr. Gary Allen, of whom she had prior knowledge and knew to be acting on behalf of a Mrs. M.W. with apparent and actual authority to so act. He requested that plaintiff Koe or the ACLU undertake to

represent Mrs. M.W. in an action against certain persons who procured, performed or authorized her sterilization. In response to such request, she wrote Mrs. M.W. on August 30, 1973, stating the willingness of the ACLU to undertake to secure her representation.

8. Plaintiff Koe talked thereafter with Mrs. M.W. on several occasions about her proposed law suit. However, Mrs. M.W. elected not to proceed with litigation and plaintiff Koe's involvement with her was terminated. Other women residing in Aiken, South Carolina, however, who had been sterilized or threatened with sterilization, elected to proceed with litigation and filed a damage action through lawyers associated with the ACLU, in Doe v. Pierce, Civ. No. 74-475, D.S.C. Plaintiff Koe does not represent any of the parties in Doe v. Pierce, nor has she any direct involvement in that case.

9. Upon information and belief, attorneys representing some of the defendants in Doe v. Pierce secured a copy of the August 30, 1973, letter from plaintiff Koe to Mrs. M.W. and attempted to raise

as a defense in that suit that the action was barred or rendered unlawful because of solicitation. On September 24, 1974, during the deposing of one of the plaintiffs in Doe v. Pierce, Honorable Sol Blatt, Jr., who had knowledge of the August 30, 1973, letter, permitted certain questions to be propounded to that witness involving her contacts with plaintiff Koe, but solely as to the issue of the appropriateness of the suit as a class action. The court ruled that plaintiff Koe had not committed solicitation as follows:

Judge Blatt: All right, now let the record show that the other question present to the Court was the question pertaining to this witness as to how she came to meet or to know [Jane Koe] and so this record will be clear and recognize that the Court may clear it some that this question probably goes to the issue of solicitation. This Court feels in its posture of the American Civil Liberties

Union has a duty and an obligation under the manner in which it operates to seek out and help those who it feels are not able to help themselves, either their lack of knowledge or lack of funds, the Court finds no fault with the situation out of which this suit arose with the attorneys connected with the ACL [sic], in contacting if that in fact did happen, the plaintiffs but the Court feels that the issue of contact or solicitation does go the question of validity or the appropriateness of a class action. Because of that and only because of that this Court feels that it is an appropriate question to ask this plaintiff.

10. Plaintiff Koe was served on October 11, 1974, with a complaint and notice in an action before the Board of Commissioners on Grievances and Discipline, a copy of which is attached hereto under seal as Exhibit A (original only), charging her with conduct which

tends to pollute the administration of justice or to bring the legal profession or the courts into disrepute in that her letter of August 30, 1973, to Mrs. M.W. constitutes solicitation in violation of the Canons of Ethics.

11. Upon information and belief, the complaint was initiated and will be prosecuted before the Board by the Attorney General of South Carolina or his attorneys, who also represent certain of the defendants in Doe v. Pierce.

12. Plaintiffs deny that plaintiff Koe has committed any act of solicitation, but allege that the prior ruling of the district court in Doe v. Pierce involving alleged solicitation by plaintiff Koe was withheld from the Board by the Attorney General of South Carolina or his attorneys at the time the complaint was initiated, and that such complaint was initiated against plaintiff Koe in bad faith for purposes of, and has the effect of, harassment and retaliation and chilling and discouraging the activities of the ACLU and the giving of solicited and unsolicited advice to lay persons that they should obtain counsel or take legal action.

13. The ACLU has in the past and intends in the future to educate laypersons to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

14. The Board has no authority to supervise or discipline the conduct of attorneys in their practice before the courts of the United States.

15. The actions of defendants herein complained of threaten to cause and will cause irreparable injury and harm to plaintiff Koe's professional reputation and standing in the community and will hold her up to public ridicule and scorn.

First Cause of Action

16. The initiation, filing and processing of a complaint against plaintiff Koe by defendants impermissibly burdens and chills protected activity and deprives all plaintiffs of rights guaranteed by Canon 2 of the Code of Professional Ethics of the American Bar association and the first and fourteenth amendments of the Constitution of the United States.

Second Cause of Action

17. The proceedings against plaintiff Koe before the Board of Commissioners on Grievances and Discipline are collaterally estopped by prior proceedings held in Doe v. Pierce, No. 74-475, D.S.C., and alternatively, the district court proceedings are res judicata as to the subject matter contained in the complaint filed against plaintiff Koe.

Third Cause of Action

18. The Board of Commissioners on Grievances and Discipline has no authority to supervise or discipline the conduct of attorneys in their practice before the courts of the United States, so that proceedings by such board against plaintiff Koe are null and void and deprive all plaintiffs of rights guaranteed them by the first and fourteenth amendments of the Constitution of the United States.

Fourth Cause of Action

19. The complaint filed against plaintiff Koe before the Board of Commissioners on Grievances and Discipline was initiated in bad faith and in retaliation against her in violation of the rights of plaintiffs protected by the

first and fourteenth amendments of the Constitution of the United States.

Fifth Cause of Action

20. Rule 4(d) of the Rules of Disciplinary Procedure of the South Carolina Supreme Court pursuant to which the complaint against plaintiff Koe was filed is vague and overbroad and does not contain an ascertainable standard in violation of the rights of plaintiffs guaranteed by the first and fourteenth amendments of the Constitution of the United States.

21. There is between the parties an actual controversy as herein set forth. Plaintiffs are suffering irreparable injury and will suffer irreparable injury in the future by reason of the acts of defendants herein complained of. Plaintiffs have no other plain, adequate or complete remedy to redress the wrongs and unlawful acts herein complained of other than this action for declaration of rights and an injunction. Any other remedy to which they could be remitted would be attended with such uncertainty and delays as to deny substantial relief, would involve multiple suits, cause further irreparable injury, damage and inconvenience.

WHEREFORE, plaintiffs respectfully pray that this Court will take jurisdiction of this cause and do the following:

- 1) Declare that the complaint filed against plaintiff Koe and proceedings before the Board of Commissioners on Grievances and Discipline violate rights secured to plaintiffs by the first and fourteenth amendments of the Constitution of the United States;
- 2) Issue a permanent injunction enjoining the defendants, their agents, officers, servants and employees and successors in office and all those acting in concert or participation with them from prosecuting or otherwise processing the complaint against plaintiff Koe before the Board of Commissioners on Grievances and Discipline; and
- 3) Plaintiffs respectfully pray that the costs of this proceedings,

including their reasonable and necessary attorneys fees, be taxed against the defendants.

Respectfully submitted,

s/ Laughlin McDonald
Laughlin McDonald
52 Fairlie Street, NW
Atlanta, Georgia 30303

s/ Ray P. McClain
Ray P. McClain
Epstein & McClain
P.O. Box 608
Charleston, South
Carolina 29402

Melvin L. Wulf
22 East 40th Street
New York, New York 10016

Charles Morgan, Jr.
410 First Street, SE
Washington, DC 20003

ATTORNEY FOR PLAINTIFFS

STATE OF SOUTH CAROLINA BEFORE THE
County of Richland BOARD OF COMMISSIONERS ON
GRIEVANCES AND
DISCIPLINE

In the Matter of:)	
)	
John W. Williams, Secretary)	
of The Board of Commissioners)	
on Grievances and Discipline,	)	AMENDED
	)	AND
Complainant,	)	SUPPLE-
	)	MENTAL
vs.	)	ANSWER
)	
Edna Smith,)	
)	
Respondent.)	

The Respondent answers the complaint as follows:

1. Any allegation of the complaint not hereinafter specifically admitted, qualified, or explained is denied.
2. The allegations of paragraph 1 of the complaint are admitted.
3. The allegations of paragraph 2 of the complaint are denied.
4. Respondent alleges that the complaint impermissibly burdens protected activity and deprives her of rights guaranteed by Canon 2 of the Code of Professional Ethics of the American Bar Association and implementing Ethical Considerations

and Disciplinary Rules and the first and fourteenth amendments of the Constitutional [sic] of the United States.

5. Respondent alleges that these proceedings are collaterally estopped by prior proceedings in Doe v. Pierce, No. 74-475, District of South Carolina, and alternatively such proceedings are res judicata as to the subject matter herein.

6. Respondent alleges that these proceedings were instituted in retaliation against her because of her race, sex, and assoicational [sic] activities with the American Civil Liberties Union in violation of the first and fourteenth amendments of the constitution of the United States.

7. Respondent alleges that Rule 4 of the Rules of Disciplinary Procedure of the South Carolina Supreme Court are vague and overbroad in violation of the first and fourteenth amendments of the Constitution of the United States.

WHEREFORE, having answered the complaint respondent prays that the same

be dismissed.

Respectfully submitted,

s/Laughlin McDonald
Laughlin McDonald
52 Fairlie Street, N.W.
Atlanta, Georgia 30303

Epstein, McClain & Derfner
P.O. Box 608
Charleston, South Carolina
29402

Of Counsel:

Melvin L. Wulf
22 East 40th Street
New York, New York 10016

Charles Morgan, Jr.
410 First Street, S.E.
Washington, DC 20003

[Submitted to Supreme Court of South Carolina in Motion to Supplement Record, dated October 18, 1976. These materials were part of the records of the Commission on Grievances and Discipline but had not been included when the record was certified to the Supreme Court of South Carolina on September 23, 1976.]

March 17, 1975

John W. Williams, Esq
1600 St. Julian Place
Columbia, S.C. 29204

Re: Williams v. Smith

Dear Mr. Williams:

Thank you for your reply to my letter of March 12 concerning previous opinions of the Board. However, I think that perhaps you misunderstood my request. I have already studied the decisions of the South Carolina Supreme Court regarding solicitation, including the Crosby case that you mentioned. We did not request citations, but properly excised panel reports. The information I am seeking is the opinions, reports, and/or findings of the Board of Commissioners or panels thereof, on cases that have not been referred to the Supreme Court, which is available only from the

Board's files. I have reason to believe, from my recollections of a speech made here in Charleston by Camden Lewis and from informal discussion with attorneys who have represented clients before the Board, that there must be a number of such opinions, reports, and/or findings. I would think that even if such reports are not indexed, the staff recalls the most important reports regarding solicitation. With that clarification, we renew the request in my earlier letter.

Very truly yours,

Ray P. McClean [sic]
Attorney at Law

RPM/ch

cc: Laughlin McDonald, Esq.
52 Fairlie St., N.W.
Atlanta, Ga. 30303

[See explanatory note, supra, A21.]

THE SUPREME COURT OF SOUTH CAROLINA
THE BOARD OF COMMISSIONERS ON GRIEVANCES
AND DISCIPLINE

March 21, 1975

PERSONAL AND CONFIDENTIAL

Mr. Ray P. McClain
Attorney at Law
Post Office Box 608
Charleston, South Carolina 29402

Dear Mr. McClain:

I am a great admirer of any lawyer who keeps the "other side" off balance. Please note your letter to me of March 17, 1975, which contains two different spellings of your last name. This is a new one on me but very effective.

Even though we do not file in my office by subject matter, I have reviewed my file cards in an effort to determine if there are any cases in my possession which have arisen since my connection with the Board involving solicitation and I beg to advise that I find none other than the Crosby case. I am sending Cam Lewis a copy of this letter and yours so that if he remembers any such cases, he can call them to my attention and I will be

happy to remove all names and send you
copies of whatever we might have.

Sincerely,

s/ John W. Williams
John W. Williams

dpg

cc: Mr. Camden Lewis

Mr. Laughlin McDonald, Attorney at Law

[See explanatory note, supra A21.]

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE

In the Matter of:)	
	)	<u>SUBPOENA AND SUBPOENA</u>
Anonymous,)	
	)	<u>DUCES TECUM</u>
Respondent.)	

TO: HERBERT E. BUHL, III, ESQUIRE
Attorney at Law
2016 1/2 Green Street
Columbia, South Carolina

We command you, that all and singular
business and excuses being laid aside, you
appear and attend before the Board of Com-
missioners on Grievances and Discipline in
Room 210 on the second floor of the Supreme
Court Building, Columbia, South Carolina,
at 10:00 AM, Thurs, Mar. 20, '75 to testify
and give evidence in the above captioned
matter on behalf of the Complainant and
that you bring with you and produce the
following records and information:

All accounts, books, or other finan-
cial records of the Carolina Commu-
nity Law Firm and the firm of Buhl,
Smith and Bagby during the years

1973 and 1974, pertaining to the financial arrangements of those firms with the American Civil Liberties Union, the ACLU Foundation, Inc., and any affiliate organizations.

If you refuse or neglect to obey this Subpoena, to attend, to be sworn, or to affirm, to answer any proper question, or to produce the requested documents you shall be deemed in contempt of the Supreme Court of South Carolina and punished accordingly.

s/ Edward M. Royall (SEAL)
Member, The Board of Commissioners on Grievances and Discipline.

[Jurat and acceptance of service omitted in printing.]

IN THE SUPREME COURT OF SOUTH CAROLINA
FOR THE BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE
BEFORE THE PANEL MEMBERS

In the Matter of:

John W. Williams, Secretary)
of the Board of Commissioners)
on Grievances and Discipline,)

Complainant,)

-vs-

Edna Smith,)
Respondent.)

PANEL MEMBERS:

JOHN B. MCCUTCHEN, Esq., P.O. Box 647,
Conway, South Carolina, Chairman of the
Board.
H. HAYNE CRUM, Esq., P.O. Box 97, Denmark,
South Carolina.
MELVIN B. MCKEOWN, Esq., P.O. Box 299,
York, South Carolina.

* * *

[1] The following proceedings were held in the South Carolina Supreme Court Building, Room 210, on March 20, 1975, commencing at 10:00 o'clock a.m. before Panel Members of The Board of Commissioners on Grievances and Discipline.

* * *

[4]

MR. MCCUTCHEN: I assume, Gentlemen, from the Respondent, that she is familiar with the charge that's contained in the Complaint?

MR. MCDONALD: That's correct.

MR. MCCUTCHEN: And specified in Paragraph Number 2?

MR. MCDONALD: Yes, sir, she has been served with a copy of the Complaint.

MR. MCCUTCHEN: You may proceed, Mr. Kale, if you are ready.

[Transcript continued on next page without omission.]

[4] MRS. MARIETTA WILLIAMS, a witness on behalf of the Complainant, having been duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. KALE:

Q. Mrs. Williams, would you please state your full name? A. Marietta Williams.

Q. Where do you live? A. Aiken, South Carolina.

Q. Okay. Mrs. Williams, I would like to direct your attention to the year 1973. Do you know a Dr. Pierce? A. That's my doctor.

Q. That's your doctor? A. Yes, sir.

[5] Q. And did Dr. Pierce perform an operation of any manner? A. He did.

Q. What type of operation was that?

A. A sterilization.

Q. Subsequent to this operation that was performed, were you contacted by members, or member, or persons associated with the American Civil Liberties Union?

A. After the operation was performed, it was in July, Edna Smith, that's who she said she was.

Q. Edna Smith? A. Right.

Q. Is this Edna Smith that contacted you? A. Yes, it is.

Q. Please let the record point out that she identified the Respondent as Miss Edna Smith, the person who had contacted her.

Q. Mrs. Williams, can you relate to us the circumstances of her contact with you? A. Well, it was like this; I was coming from Aiken County Hospital, which my baby was in the hospital, he was dehydrated. And I was coming from the hospital and I met Mr. Gary Allen. And he said I was just the person he was looking for. I said, "What do you mean?"

Q. Now, can I just stop you here? Who is Mr. Gary Allen? A. That is the man that taken me to his trailer where I met [6] Edna Smith at.

Q. Okay, go ahead, please. A. Well, I got in the car and we went over to his trailer and that's when I met Miss Edna Smith.

Q. Okay. A. And they were telling me about I could sue Dr. Pierce for sterling [sic] me, for the operation.

Q. Okay. Now, do you recall the exact date this occurred on? A. I can't

recall the exact date. I know it was in July, the last portion of July.

Q. Of 1973? A. Right.

Q. Okay. Do you remember more exactly what the conversations were?

A. Well, yes, they were talking about it was unfair, you know, that the women should have their own rights or whether they wanted to be sterile or not, and that the doctor was not right.

Q. The doctor you are talking about is -- A. Dr. Clovis H. Pierce.

Q. He is your family doctor? A. No, he is my doctor that delivered my kids for me.

Q. Did Miss Smith talk to you about bringing a legal action against the doctor?

A. Yes, she did. And she also sent me the letter.

[7] Q. Okay, we will get to that in just a moment. Now, did Miss Smith fully advise you of your rights? A. Yes, she advised me of my rights.

Q. Did she tell you that you could get any money damages, or anything? A. Well, yes, she said if I brought a suit against Dr. Pierce that I could get money.

Q. Did she say she wanted to bring the action for you? A. Yes.

MR. MCCLEAN[sic]: Mr. Chairman, I would have to object to the constant leading of this witness.

MR. MCCUTCHEN: Yes, don't lead the witness.

Q. (By Mr. Kale) What did she tell you she wanted to do for you? A. Well, she explained to me my rights. And she also stated that if I brought a lawsuit I could get money, that she would be my attorney.

Q. What did you tell Miss Smith that you wanted to do? A. At the time I told her I didn't have time to be bothered with that because I had a kid in the hospital they were looking to die, that I didn't have time for that, that I would contact her some more. That's when she sent this letter to me. And I called her right there in the office.

Q. Okay, now, let's slow up. Did you tell her under what circumstances you would bring a suit against Dr. Pierce? [8] A. Yes, I did, when I called and talked to her I told her that I would sue Dr. Pierce if I got pregnant again.

Q. Did you tell her that at the time you were meeting her at the trailer?

A. No, at the time I didn't know what was going on because I had my mind on my kid.

Q. Mrs. Williams, were you contacted by people from the ACLU in November of 1974? A. From who?

Q. Concerning making a statement? A. From the who?

Q. Did Mr. McDonald contact you? A. Yes, he did.

Q. Did he ask you to make a statement in this matter? A. Yes.

Q. Did you make a statement? A. Yes, I told him I wasn't going to sue.

Q. Do you recall if you made a statement, at that time, do you recall if you made a statement that you told Miss Smith, at that time, that you did not want to bring a lawsuit? A. Yes, I recall that.

Q. You did make that statement? A. I did make that statement.

Q. And that was in July of 1973, that you allegedly make a statement?

[9] A. Right.

Q. Can you recall what you said in your affidavit? A. Well, I think I said that I would not sue Dr. Pierce unless I got pregnant again; then I would bring a lawsuit.

Q. And this was in July of 1973?
A. 1973.

Q. Were you in contact with Miss Smith at any time from the July meeting until you received the letter from her?
A. No, I wasn't.

Q. You made no contact? A. No.

Q. Did she make any contact? A. No, she didn't until she sent the letter which was August 30.

Q. Now, do you have a copy of that letter here? This is a copy of that letter that you received? A. From Edna Smith.

MR. KALE: We would like to introduce this into evidence.

* * *

[10] MR. MCCUTCHEN: The Panel will let the letter in. Your objection is in the record and you are protected. Let the Court Reporter mark it in evidence.

(Thereupon Complainant's Exhibit C-1 marked in evidence, letter dated

August 30, 1973, from Edna Smith to [11] Mrs. Marietta Williams)

Q. (By Mr. Kale) Mrs. Williams, what was the date that you received that letter? A. August.

Q. August? A. No, it was in September when I received the letter. It was mailed out August 3rd. I would say it was August the 2nd or 3rd, something like that. I mean, September 2nd or 3rd, somewhere along there.

Q. And I believe your testimony was you had no contact in between these times?
A. No.

Q. What did you do after you received that letter? A. I carried it to my attorney.

Q. Did you subsequently contact Miss Smith? A. Yes, I did. I called her at the office and I told her I didn't want any part, that I wasn't suing anybody because it didn't make much sense. And I told her that the only way I would sue, bring a lawsuit against Dr. Pierce is that I did get pregnant.

MR. KALE: Okay. I have no further questions.

CROSS EXAMINATION

QUESTIONS BY MR. MCDONALD:

Q. Mrs. Williams, where were you born? A. Aiken, South Carolina.

[12] A. And how long have you lived there? A. All my life until about a year ago.

Q. You testified, I believe, in response to a question, that you had moved. Is that a move within the city? A. Yes. My grandmother, she had moved from Sumter Street to Carver Terrace and I wasn't here then, I was in Florida at that time. And I have been around, you know, originally since them.

Q. What sort of schooling have you had? A. I went to the ninth grade.

Q. And have you had any regular employment? A. Yes, Continental Marking, I was operator there.

Q. I'm sorry. A. Continental Marking.

Q. What were your duties at the Market? A. Operator.

Q. Operator? A. Telephone operator.

Q. And what sort of employment did you have before? A. Well, \$63.00 a week.

Q. What sort of work was that?
A. It was on the telephone calls, different,

just an operator.

Q. You have been married. Are you presently married? A. I am presently married.

Q. And do you have any children?

[13] A. Three.

Q. Where are they at the present time? A. My grandmother have the two oldest kids.

Q. Were you ever involved in any custody proceedings over your children? A. Yes, the three. In fact, the welfare have custody of the baby. My grandmother have custody of the two older kids. But since me and my husband are gone back together we have custody of all of them.

Q. Can you tell me why you lost custody at one time? A. Yes. At one time --

MR. KALE: I'm going to object. I don't know what the relevancy of all this is.

MR. MCDONALD: Well, I'm going to attempt to join it up. I think it will go to the competency.

MR. MCCUTCHEN: Well, what is the purpose of it, Counsel?

MR. MCDONALD: Well, it would go to the competency of the witness, I believe, Sir. I think that would permit me at some point --

MR. MCCUTCHEN: Well, your position is that the question of her custody affects her credibility?

MR. MCDONALD: Right.

MR. MCCUTCHEN: In what way?

MR. MCDONALD: I think there might have been a [14] finding of the general incompetency and I think that would go to the weight her testimony ought to be given by the Panel.

MR. MCCUTCHEN: I think the finding would be the best evidence, if there is such, and I'm not sure that that affects the matter of credibility.

MR. MCDONALD: I think that we would be entitled to develop that.

MR. MCCUTCHEN: Do you have any indication that there has been some finding of incompetency or are these just a series of general questions relating to this matter of custody?

MR. MCDONALD: Your Honor, it's my understanding from conversations with the witness that the children have been taken

away from her by the Department of Public Services. So I wanted to establish whether or not there was an adjudication or finding that she was not fit to care for them.

THE WITNESS: No, sir, it wasn't.

MR. MCCUTCHEN: Well, I don't see that this has any bearing on the question of credibility. If you have some finding of some proper court proceeding that touches the matter of credibility, that's another matter, but I don't believe this --

MR. MCDONALD: All right, sir. Let me ask the witness, if I may, if she has even been committed to any [15] institution, for example the State Hospital here in Columbia?

THE WITNESS: Well, no.

MR. MCDONALD: Have you ever spent any time in the State Hospital?

THE WITNESS: Yes, in 1970.

MR. MCDONALD: Can you tell me the circumstances --

MR. KALE: I'm going to object again. He says he hasn't had any findings. I don't see what relevance this has either.

MR. MCDONALD: Well, I have got a right to ask the witness about this whole thing.

MR. MCCUTCHEN: We are going to permit him to proceed for the time being with reference to admission and subject to the objection of the Attorney General.

MR. MCDONALD: Could you explain that?

THE WITNESS: Yes. In 1970, I had just come out of the University Hospital in Augusta, Georgia, which I stayed there a period of three months. I had been in a terrible accident and I couldn't walk. And I thought that I never would walk. And I tried to take -- took an overdose of my pills and that was all the reason why I had to stay in the hospital. I stayed in there a period of thirty days and I asked them did I have to discuss that I had ever been in the State Hospital and they told me no I had a complete [16] discharge as through [sic] I had never been in the State Hospital.

Q. (By Mr. McDonald) All right, now, Mrs. Williams, I believe you testified that you had a conversation with a Mr. Gary Allen about a meeting and you went to that meeting and met Miss Smith there, is that correct? A. Yes.

Q. Now, could you tell me, please, what Mr. Allen said to you about it? A. He just told me that I was the person that he wanted to see. And I said, "About what?" He said, "Wasn't Dr. Pierce your doctor?" I told him, "Yes." He said, "Well, didn't he operate on you?" I said, "Yes, he did." He said, "Well, you come on down here to my office because there are some people down here that would like to talk to you." I said, "What kind of people, look, I don't have time to be bothered because I got a baby in the hospital and they look for my baby to die and I ain't got time for this kind of mess." He said, "There was some attorneys there and would like to see me and would like to represent me in suing the doctor for money." I said, "What the doctor did?" He said, "Because the doctor sterilized [sic] you, you cannot have any more kids." And I said, "Yes, I know that, I know that, he explained that to me before I even signed the paper."

Q. Well, why did you go to that meeting? [17] A. To see what it was all about, me and my grandmother was together.

Q. Did Edna Smith, in any way, get you to go to that meeting? A. I didn't even see her until I got there.

Q. You went on your own free will and accord at Mr. Allen's request?

A. Right, at his request.

Q. Did anybody force you to go there? A. No, nobody didn't force me.

Q. Who else was at that meeting?

A. Barbara Page, Gary Allen, Edna Smith, and I think Dorothy Waters, she was there, also. And it was some more people there, I wasn't paying attention to everybody.

Q. Now, you say Edna Smith was there. Tell me what sort of conversation you had with her. Did she address the group generally or did she talk to you specifically? A. She addressed everybody. She told me who she was. And she explained what it was all about, about she would represent me in suing Dr. Pierce. Well, I didn't understand because, like I stated then, that I had a baby in the hospital that I was worried about my child's life and I wasn't hardly interested about suing anybody.

Q. Were you free to leave, at any time, during that meeting? A. Yes.

Q. Did anybody attempt to say you had to stay there? [18] A. Nobody can't make me do nothing.

Q. Now, these statements that Edna Smith made, were they made to the group as a whole or you individually? A. She just talked to me directly.

Q. Well, were you present with everybody in the room during this -- A. Yes, I was in the room but everybody, you know, they had their own conversations going.

Q. Right. A. And I was sitting by her.

Q. But there were other people in the room there. A. Yes, but she was talking to me directly.

Q. Who else was there other than the people from Aiken, and Edna Smith?

A. There was some white people there with cameras.

Q. Do you know who they were? A. No, I don't.

Q. Did you have any conversation thereafter with Mr. Gary Allen? A. No, I didn't.

Q. You don't recall whether or not you told Mr. Allen to get in touch with --

A. I know I ain't told him to get in touch with her.

Q. Let me finish my question. Did you ask Mr. Allen to get in touch with somebody to represent you to bring a suit against [19] Dr. Pierce? A. No. I didn't.

Q. Did you have any conversations with Mr. Allen following that first meeting? A. No, I didn't.

Q. Now, did you have any conversations with Edna Smith following that meeting and before you got that letter? A. No.

Q. You never talked to her on the phone? A. No, not until I called her after I got the letter.

Q. Now, tell me what happened, if you will, when you went to see your lawyer after you got that letter. Was that your testimony? A. Yes.

Q. Tell me, in point of fact, you went to see Dr. Pierce for one of your regular checkups, isn't that correct? A. Yes, I did.

Q. And was anybody there with Dr. Pierce? A. Yes, my attorney.

Q. It was your attorney? A. We have the same attorney, Attorney Johnson.

Q. Who was that attorney that was at Dr. Pierce's office? A. B. Henderson Johnson, Jr.

Q. And your testimony is that he had represented you prior to that time? [20] A. Yes.

Q. In what connections? A. About my kids.

Q. About your children? A. Yes.

Q. Explain to me what you mean by that.

MR. KALE: Objection, Your Honor, I don't know where we are getting into an attorney-client privilege here between Mr. Johnson and Mrs. Williams, I don't know what he intends to pursue in this manner.

MR. MCDONALD: Well, it would be her privilege.

THE WITNESS: Well, I don't think that what I had to talk to Mr. Johnson about, I don't think I have to tell you about because I don't think that's why I come here or nobody didn't tell me that's what I was coming here for.

Q. (By Mr. McDonald) Does Mr. Johnson presently represent you in connection with -- A. Yes, he do.

Q. -- in any matter that arises out of the matter that is presently before this Panel? A. No, he don't have anything to do with what's going on here.

MR. MCDONALD: I believe the privilege will be improperly invoked under the circumstances, and I request that the witness answer my question.

MR. KALE: I don't see the relevance either.

[21] MR. MCCUTCHEN: I don't think it's relevant, Counsel, and the Board feels it's neither germane to this issue.

MR. MCDONALD: I believe it's relevant because we allege that the Complaint in this matter was not [sic] instituted in bad faith. And I would intend to tie the testimony up here and show that Mr. Johnson is one of the attorneys involved in Doe v. Pierce and that he actually received a copy of this letter approximately twelve months before the Complaint was filed in this matter. And we believe that shows that after the Complaint was filed in Doe v. Pierce, and we believe that shows that was an initiation of the Complaint to retaliate against the roll [sic] which Miss Smith may have played.

MR. KALE: May it please the Panel, I'm not sure I understand. I'm not sure he is saying the Board of Grievance and Discipline brought this matter in bad faith. I don't see what that has to do with Mr. Johnson. I don't see the relevancy of this.

MR. MCDONALD: What we mean is the effect is that the letter was forwarded to the committee and whereby initiation, that's what I mean, I don't suggest that this Panel did that.

MR. MCCUTCHEN: Counsel, the feeling of the Panel is that it is entirely too remote and we sustain the [22] objection.

MR. MCDONALD: If I may just make an offer of proof on that point; and that would be that Mrs. Williams went to see her doctor for one of her regular scheduled check-ups immediately after she received the letter from Edna Smith.

MR. KALE: May I interject this. I don't want to interrupt your offer --

MR. MCDONALD: Well, you are.

MR. KALE: We went through the same matters in Federal Court and in Federal Court they raised the same motions or statements of bad faith and it was dis-

missed by the Federal Court. Now, I don't believe that it's necessary to bring these matters up again. This was a part of the suit of Jane Coe [sic], the ACLU versus Harry Bozardt and others. It was dismissed by the Federal Court at that time. I don't think it's relevant here. We have maybe an issue of collateral estoppel [sic]. Again I don't see the purpose of going into this matter.

MR. MCCUTCHEN: Well, I think at this stage of the proceedings -- who is this?

MR. MCDONALD: He is a potential witness.

(Thereupon a witness was excused from the room)

MR. MCCUTCHEN: I think the Panel is of the opinion that, at this stage of the proceedings, solely for [23] the purposes of making your offer of proof you may, within a limited degree, put this in the record. But, I think at this stage of the proceeding, I should make the feeling of the Panel perfectly clear that Counsel on both sides; and that is, that in the nature of this proceeding we are not going to litigate today and get

into this record the matters that have been thrashed out before Judge Chapman in your proceeding in the Federal Court. Now, within that limited area we would let you tender, for the purpose of your proof, in this limited degree what you have proceeded to ask. But we are not going to litigate the matters that have already been litigated --

MR. MCDONALD: Let me say for the record that nothing has been litigated in the Federal Court. Judge Chapman abstained on the grounds of Young [sic] v. Harris. Nothing was litigated in the Federal Court. The Complaint was dismissed without any hearing on the merits without any testimony so we are not attempting to relitigate the thing at all.

MR. MCCUTCHEN: I understand that.

MR. MCDONALD: Would it be the Panel's wish that I make my offer of proof?

MR. MCCUTCHEN: Yes.

MR. MCDONALD: We would show that Mrs. Williams went to see her doctor for a regularly scheduled check-up [24] almost immediately after she received a letter from Edna Smith, and that at that check-up she was met by Dr. Pierce and Dr. Pierce's

attorneys [sic], Mr. B. Henderson Johnson from Aiken, and further more that Mr. Johnson had never, prior to that time, represented the witness in any capacity; that as she went into Dr. Pierce's office Mr. Pierce's attorney, Dr. Pierce's attorney, said words to this effect, I understand you have talked with Edna Smith, that you intend to bring a lawsuit against Dr. Pierce whereupon Mrs. Williams disclaimed any such intention and stated her child was about to die from dehydration, that that was her only concern, that she was not interested in bringing a lawsuit; whereupon Mr. Johnson had her execute a waiver in favor of Dr. Pierce of any liability for her sterilization and instructed her to telephone Edna Smith from Dr. Pierce's Office and tell her, Edna Smith, that Mrs. Williams didn't want to sue anybody, and she did that. So that would be what we would establish through the testimony of this witness and also Mr. Johnson.

Q. (By Mr. McDonald) Mrs. Williams, let me hand you a document and ask you, if you will, to identify that for me.
A. Yes. I think I told you this, or somebody.

Q. What is that? A. Where I stated that I did meet Edna Smith. She did not try to persuade me or in any way bring a lawsuit, she didn't [25] try to tell me, you know, for some fee or something.

Q. Is that your testimony now? A. Yes.

Q. Did you read this? Is this, in fact, an affidavit which you executed there on the date bearing the date of November 7, 1974? A. Ain't but one thing wrong with this evidence, where it say at Mr. Johnson's request. He didn't request me, I asked, you remember, I think I told you, I asked him could I use a telephone to call Edna Smith.

Q. Is this, in fact, this document an affidavit which you signed on November 7, 1974? A. Yes.

Q. And prior to signing this statement, or this affidavit, did you read it over? A. Yes, I have read it over.

Q. And did I, in fact, read it to you prior to your signing it? A. Yes, you did. I haven't paid no attention to this part, at Mr. Johnson's request, she notified Edna Smith using Dr. Pierce's

phone. He didn't request that I call her. I asked was there a phone there that I could use. I think I told you that, remember I told you that? Didn't I tell you that in the car?

Q. Is that the only part of the statement that you say is incorrect, the affidavit? [26] A. No, no. Everything else is right. I did say Edna Smith did not attempt to persuade or pressure me to file this lawsuit.

Q. And you say here in your statement that she didn't offer to represent you for a fee or otherwise, is that correct? A. She didn't offer to represent me for no fee.

Q. Or otherwise? A. Yes.

Q. And will you tell me whether or not you made any notations on that statement yourself? A. About what?

Q. Well, for example, did I spell your name correctly? A. No, you didn't. I think I read it and you had Marietta.

Q. And did you change that yourself? A. Yes, I did.

Q. And will you tell me whether or not you wrote in the name of one of your children there? A. Yes, you did it.

Q. And you wrote that in yourself?

A. Yes.

Q. Was there anybody present when you executed this affidavit? A. You.

Q. And other than me? What about Mr. Gary Allen, wasn't he there? A. Talking about I can't change this around?

[27] Q. That's right. A. He was in the car, he was in the back seat.

Q. Will you tell me whether or not we had a conversation prior to the time that I saw you with Mr. Allen, on the telephone? A. Yes, we did, because you and Mr. Allen called me from his office, remember?

Q. And we talked on the phone? A. Yes, me and you talked on the phone and you said you wanted to see me.

Q. And did we go over the stuff that's in this affidavit, at that time, on the phone? A. Yes.

Q. Is that correct? A. Yes, I think we did go over it.

MR. CRUM: Will you clear up a question for us?

MR. MCDONALD: Yes, sir.

MR. CRUM: Who is Mr. Allen?

MR. MCDONALD: We will call Mr. Allen later. As you recall, Mrs. Williams testified that Mr. Allen arranged the meeting or called her to it and that's who that gentleman is. He was the gentleman who was here. We would like to -- I don't know whether it's appropriate on cross examination to offer this into the record but we either do so at this time or reserve the right to do so.

MR. KALE: I would ask what purpose he is introducing [28] the affidavit since he is here today to testify.

MR. MCDONALD: Well, it's the witness' statement.

MR. KALE: Well, he can bring that out on examination.

MR. MCKEOWN: Do you intend to show that she has made any inconsistent statements in the affidavit?

MR. MCDONALD: Well, sir, she has stated that Edna Smith did not attempt to persuade or put pressure her to file a lawsuit or offer to represent her for a fee or otherwise. She also explained fully the circumstances of the meeting.

MR. KALE: If it please the Panel, this appears to be an affidavit which

Mr. Mac Laughlin drew up, we don't know when or where or how, which he offered to Mrs. Williams to sign without benefit of any separate counsel herself on exactly what the language means or what it purports to mean. I'm not completely satisfied that she has the exact knowledge of the meeting [sic] of the language that this attorney has drawn up. She is here today to testify and she can be asked questions. I don't see the relevance or the necessity of having an affidavit that the attorney for the Respondent drew up unless he is going to show it's inconsistent statements, and so forth.

MR. MCDONALD: Through all respects, she explained the circumstances under which we talked and which the [29] affidavit was drawn. We talked on the telephone and she stated that we discussed the matter. And I went down with Mr. Allen, an independent witness who will corroborate [sic] this. She explains that I read the statement to her, that she read it, that she understands it.

MR. MCCUTCHEN: Well, if you have some part of it that you feel is inconsistent, I think you have a right to ask her about the inconsistencies, but unless there is

some differences in her testimony presently and what she relates in the sworn affidavit, I don't think, otherwise, the affidavit really is of any significance. Now, if you have some contradiction or inconsistency you may proceed to develop the inconsistency by questioning from the affidavit, but otherwise I don't think the affidavit is such, particularly since the witness is here under oath and testifying and subject to your cross examination.

Q. (By Mr. McDonald) All right, Mrs. Williams, let me hand you that document, if I may. In the first paragraph of that document, it states -- let me read it to you, it says, "Marietta Williams --

MR. MCCUTCHEN: Counsel, let us ask that you simply identify it for the purpose of the record. If you will ask the Court Reporter to just mark your affidavit, then it can be identified. For identification only.

Q. (By Mr. McDonald) Let me ask the Court Reporter to mark [30] for purposes of identification the document which has been identified by Mrs. Marietta Williams and about which she has been testifying.

(Thereupon Respondent's Exhibit Number R-1 marked for identification)

Q. (By Mr. McDonald) Mrs. Williams, do you recall whether or not you called Edna Smith a second time? A. No, I didn't. I called her one time. What did I want to call her two times for?

Q. You don't recall whether you talked with her after you spoke in Dr. Pierce's Office? A. No.

Q. You have no recollection of calling her to say that you really hadn't made up your mind about --

MR. KALE: Objection. She has answered the question once.

Q. (By Mr. McDonald) Will you tell me, whether or not, at some point following your sterilization you had determined that you did want to bring a lawsuit against Dr. Pierce? A. Not but one time. I got tired of everybody aggravating me. Everyone was coming to ask me wasn't I going to sign to file a lawsuit. And after I had said a hundred times I didn't want to sue then I got the notion that maybe if I sue maybe they will leave me alone, I'm tired of being bothered.

[31] Q. And do you recall whether or not you told Mr. Allen that you, in fact, did want to bring a lawsuit? A. No, I ain't told him that.

Q. Did you tell anybody else that you did want to bring a lawsuit? A. Yes, I did, I told Attorney Johnson in his office one day, I told him, I said, "I'm really tired, tired, I get busy with my own problems because I have problems of my own. And the time I leave and get somewhere and think I'm settled down, then my mother will call or write me and tell me to come back to Aiken that there is something else done come up about this same mess. And I have to turn around and spend money coming all the way back. And I told him that I'm good mind to sue, maybe if I sue they won't be bothering me, I'm tired of it.

Q. All right. When you went to see Dr. Pierce, you say that you met with an attorney, B. Henderson Johnson? A. Yes.

Q. Had you requested that he be present? A. I didn't know that he was going to be there.

MR. KALE: May it please the Panel, I wonder if he is going into this matter Johnson as an offer of proof. I believe he has already made his offer of proof.

I don't see what the relevancy of matters with Mr. Johnson have to do with the particular question we have here this morning.

[32] I believe the Panel has said that they did not intend to go into these issues at this particular hearing.

MR. MCDONALD: I'm sorry, I don't understand that.

MR. KALE: The matters of Mr. Johnson.

MR. MCDONALD: Did you say that the Panel indicated they did not?

MR. KALE: My understanding was from what Mr. --

MR. MCDONALD: I though you indicated that the Respondents, I'm sorry.

Q. (By Mr. McDonald) Let me ask you, if I may; you testified about this letter which has been introduced into evidence. And you state that the original of that letter was lost. Will you tell me how you got a copy of that letter which you brought with you? A. From my Attorney Johnson because I had already -- when I carried the original letter to Dr. Pierce's Office I asked Mr. Johnson would he get a copy of that original letter. And he asked me would I leave it by his office and I told him yes I would. I went by his office and left it.

Q. I see. And did you get the original back from him? A. Yes, I did, I got the original back from him.

Q. And he maintained the copy for you? A. Yes.

Q. And you had to get a copy from him for the purpose of this hearing? [33] A. Right.

Q. Now, give me the date, if you will, when you went to see Dr. Pierce and talked with Mr. Johnson? A. When I went back for my six weeks check-up.

Q. That would have been in August 31, 1973, or in September, '73? A. August.

Q. And that's when you showed the letter to the lawyer? A. Right.

Q. Mrs. Williams, I have just one more question for you. Do you recall whether you stated to me, in the presence of Mr. Alled [sic], that you might want to sue Dr. Pierce as far as your sterilization? A. I think I did state that in front of Mr. Allen, remember that day? Why, because I was cooking that day and I stated to you, I said, "Well, I'm tired of this mess, and I said maybe if I sue, if I sue they will leave me along [sic]." And that's when I said, "I think I will sue

so they probably will leave me alone." Remember I stated that when Mr. Allen was in the back seat of the car?

MR. MCDONALD: Thank you.

REDIRECT EXAMINATION:

QUESTIONS BY MR. KALE:

Q. Mrs. Williams, do you know what time it was that you made that statement he just referred to, what month? [34] A. It was in November, I think, in the afternoon but what time I couldn't tell.

Q. Okay. What I meant, was the month? What year? A. '74.

Q. 1974? A. 1974.

Q. This was approximately a year after you originally saw these -- A. Right.

Q. -- people in the trailer? A. Right.

Q. Mrs. Williams, did Miss Smith talk to you extensively about your rights, your legal rights, in this matter of the sterilization at the time she talked to you in the trailer? A. Could you be more specific?

Q. Did she advise you of your legal rights? A. Well, yes.

Q. At the time you talked to her in the trailer? A. Yes, she did.

Q. Did she say that she would represent you? A. She did state that I could get money.

Q. That you could get money? A. She did state that I could get money.

MR. KALE: I have no further questions.

RE CROSS EXAMINATION:

QUESTIONS BY MR. MCDONALD:

[35] Q. In the statement which you just looked at, you state, paragraph 4, that Edna Smith did not, however, attempt--
A. She said I can get money, I didn't say her, she said me, --

Q. And you say -- A. -- and I was the one supposed to be suing the doctor for the money.

Q. All right, but you said in your statement in Paragraph 4, did you not, that Edna Smith did not attempt to persuade or pressure her to file a lawsuit or to represent her for a fee or otherwise. That is still your testimony? A. That's right.

MR. MCDONALD: Thank you.

MR. KALE: I have just one more question to follow this up.

REDIRECT EXAMINATION:

QUESTIONS BY MR. KALE:

Q. Do you understand what otherwise means? A. No, I don't.

Q. Did she state that she would represent you without fee? A. Well, yes, she did state that. She said that she would represent me without a fee, be my attorney.

Q. But she did say she would represent you? A. Yes, she said that in front of everybody, me and my grandmother.

RE CROSS EXAMINATION:

[36]

QUESTIONS BY MR. MCDONALD:

Q. Was it perfectly clear to you that Edna Smith had no financial interest in your case personally? A. Yes.

Q. That was never a question that she was after financial gain? A. Well, yes --

MR. KALE: Object, I don't know if she is in a position to say what Edna Smith was out for. I think that's a conclusion on her part and I would move to strike that.

MR. MCDONALD: I think she can certainly talk about the discussion they had.

MR. KALE: She can talk about specific discussion but that's a conclusion upon her part.

MR. MCCUTCHEN: I think the objection is well taken. She can relate what the Respondent told her but any matters of opinion I don't think are proper.

MR. MCDONALD: All right, Sir.

Q. (By Mr. McDonald) There was no discussion between you and Edna Smith about her getting a fee for anything she might do for you? A. No.

Q. Let me ask you a question, Mrs. Williams. Do you think that anything that Edna Smith did in her dealings with you deminished [sic] -- well, let me just strike that question.

MR. MCDONALD: Thank you, very much, Mrs. Williams.

[37] MR. KALE: I have no further questions.

EXAMINATION:

QUESTIONS BY MR. MCKEOWN:

Q. Mrs. Smith, who is Gary Allen -- excuse me, I mean Mrs. Williams. A. Well, all I know is he is just a man.

Q. Where does he work? A. He has got a car lot, I think.

Q. He runs a car lot in Aiken? A. Yes.

Q. Is that his only employment. A. Well, I don't know. I mean, as far as I know, he has that car lot.

Q. How did you know him before the time you say he had some people he wanted you to talk to? A. Well, I had been knowing Mr. Allen -- see, my grandmother knewed all about him from childhood and I always have known him because he has been a friend of my family for years.

Q. Have you ever sought his advice about any matter, particularly a legal matter? A. No, I never had, I never contacted him.

Q. Had he ever sought you out to give you any advice about what your legal rights were and what you ought to do about any legal situation? A. No.

[38] Q. Where were you when you saw him on this occasion? A. Me and my grandmother had just left Aiken County Hospital up by the Soc Service Station going straight down Richland Avenue -- but anyhow, it's a service station.

Q. Did you approach him or did he approach you? A. He approached me and told me I was just the one he wanted to see.

Q. Did you go with him, at that time? A. Yes, I did.

Q. Did he tell you for what purpose he wanted you to go? A. Yes, he told me that some people was there that would like to see me and talk to me.

Q. Did he tell you any of them were attorneys? A. Yes.

Q. Did he tell you what they wanted to talk to you about? A. Yes, he did.

Q. What did he tell you? A. About Dr. Pierce and the sterilization.

Q. And you went with Mr. Allen? A. Yes.

Q. To where? A. To his trailer, and it's an office, you know, in his trailer.

Q. This is on the car lot? A. Yes, it is.

Q. And when you arrived there, Miss Smith was already there? [39] A. Yes, she was.

Q. Did she have any specific conversation with you other than the group?

A. No, she was talking to the whole group of people, there was more than one there, also Mrs. Barbara Page, a lot more of the people were there.

Q. Do you know who invited that group to his trailer? A. No, I don't know.

Q. What did Miss Smith tell you at this meeting? A. Well, she told me that it was unfair what Dr. Pierce was doing, and she was telling me that she could advise me about I could bring a lawsuit and get money for what he had done. I did state that I didn't know what was going on and I didn't have time to be bothered with it because I had a kid in the hospital that they were looking to die and I had to leave as early as I could.

Q. At this meeting who first brought up the possibility of a lawsuit, you or Miss Smith? A. Miss Smith was the one telling me about it.

Q. Had you had any thought about a lawsuit before this time? A. No, I hadn't.

Q. Did you have an attorney, at that time, that you considered to be your family attorney? A. No.

Q. Had you had any need for the services of an attorney before [40] that time for anything? A. No.

Q. Had you ever been involved in any matter that you had used an attorney for?

A. No, I haven't.

Q. No one had represented you or rendered any legal services to you prior to this time? A. No, I never had needed it.

Q. Do you have someone you consider to be your attorney at the present time?

A. Yes, Attorney Johnson.

Q. What is his full name? A. B. Henderson Johnson, Jr..

Q. All right. And who is Dr. Pierce's attorney? A. The same attorney.

Q. You and Dr. Pierce then had the same attorney? A. Same attorney.

Q. Did you discuss this matter with Mr. Johnson? A. Well, no, I just explained to him that I didn't want no part in it and that I just wanted to close the subject. So --

Q. When you talked to Mr. Johnson, when and where did you have this conversation that you had with Mr. Johnson when you told him that you didn't want any part of a lawsuit? A. Well, that next day after

I got that letter from her. And [41] I had carried it to Dr. Pierce's Office and I told him, I said, "I was --["]he said he was going to make a copy of the original letter. And I went to his office that next morning and picked that, you know, that copy up, what I gave you. And I talked to him and I told him that I didn't want anything else to do with it.

Q. At the time that you talked to him, then, did you consider him to be your lawyer? A. No, not right then, it was later after my kids were taken home when I attempted to get him to be my lawyer.

Q. Did you go to him for the purpose of asking his advice? A. I went to him. No, he didn't come to me, because I thought that's what a lawyer is supposed to do, wait til you go to him.

Q. And you were seeking his advice, at that time? A. Right.

Q. About a matter that you wanted to get his advice on? A. Right.

Q. Did you make any further contact with Miss Smith yourself after this meeting at the trailer of Mr. Allen? A. I did not other than calling her when I got that letter.

Q. When Miss Smith talked to you about the possibility of a lawsuit against Dr. Pierce, did she mention anything else besides money to you that would be gained by the lawsuit? A. No, she didn't, she just mentioned money that I could get.

[42] Q. Is that the only thing that she talked to you about? A. That's the only thing that I heard.

Q. Did she tell you anything about how much money she thought you could get or what she thought? A. No.

Q. Or what the possibilities were of making any recovery of any amount of money? A. No.

Q. Let me ask you this: You are how old at the present time? A. Twenty-two.

Q. What is your educational background? A. Nineth [sic] grade.

Q. After you received the letter from Miss Smith, what course of action did you take? A. Well, I just looked at the letter and I said, I was going to seek an attorney and see if I could get more advice from. And when I found Attorney Johnson was there to Dr. Pierce's Office that day, I just wanted to let him see the letter.

Q. Did you tell him, at the time,

that you let let him see the letter that you did not want to start any lawsuit?

A. I told him before I ever received the letter that they had been talking to me about suing Dr. Pierce for sterilization. And I told him I wasn't interested in it, that the only way that I would sue Dr. Pierce was if and when I got pregnant again.

[43] Q. And that would be because of the sterilization didn't work? A. Right, and I still mean that.

Q. And that was the only thing that you were concerned about is whether you would be sterilized and not have --
A. No more kids.

Q. Did Miss Smith tell you why she wanted to represent you in a lawsuit against Dr. Pierce? A. Well, yes, she said that she thinks that all the women there in Aiken should have their own freedom of whether they want to have any more children or not, and that a doctor shouldn't persuade them into sterilizing.

Q. Did you agree with what she was telling at that time? A. Well, no, because in my part I had my own rights, you know, like he had talked to me about it. About three months he talked to me about it.

Q. Did you feel that there was any reason, at that time, to sue Dr. Pierce?

A. No, I didn't.

Q. Do you, at the present time, feel that there is any reason to sue Dr. Pierce?

A. No, because I feel he don't make no woman come to him, and they shouldn't have something so that they can just go around here --

Q. All right. Did Miss Smith, at any time, tell you how this lawsuit would be handled; that is, how the expenses would be [44] paid or anything else of that nature? A. No, she did not, if she did, I can't recall.

Q. And the main thing she talked to you about was suing Dr. Pierce for money?

A. Money.

MR. MCKEOWN: All right.

EXAMINATION:

QUESTIONS BY MR. MCCUTCHEN:

Q. Can you tie down, specifically, the date that you say this first conversation took place when you and your grandmother were leaving the hospital? Do you remember exactly when this was or how long it was before you got this letter of August the 30th of 1973? A. If I'm not

mistaken it was a week before I got this letter.

Q. Your best recollection then is that a week before the 30th of August?

A. Nodded affirmatively.

Q. When the gentleman stopped you and indicated that there was some people that wanted to see you? A. Right.

Q. Do you remember when this child was in the hospital, the one that you say was seriously ill, was this in August or July? [45] A. He went in the hospital in July, about the last part of July. He was born June 22nd. He went -- no, about the middle part of July because he was dehydrated. That's the same baby that Dr. Pierce delivered.

Q. And how long was he in the hospital? A. He was in Aiken County Hospital one month. He stayed in Charleston Hospital two months.

Q. And it was how long after they put him in the hospital that you had this conversation with the gentleman from Aiken, Mr. Allen, how long had he been in the hospital? A. A week and a half. I said a week, when I seen Mr. Allen.

Q. Somewhere around a week or week and a half after he was admitted to the

hospital you had this discussion with Mr. Allen?

A. Right.

Q. Had you had any discussion of any kind with Mr. Allen prior to this particular one? A. No.

Q. You never talked to him about any type of business or problem that you had? A. No, I haven't.

Q. Exactly what did you tell them when you left Mr. Allen's Office that day?

A. I told him I had a baby to think of because my baby was in the hospital and that at the time I didn't have my mind [46] on suing nobody because I didn't have time to think about suing.

Q. You didn't give them an answer either way? A. No, I didn't. I did say that if I needed you all I will call you.

Q. And that's all you told them? A. Right, if I needed them.

Q. If you wanted their help you would let them know? A. That I would call them.

MR. MCCUTCHEN: Thank you, very much.

MR. MCDONALD: I have two questions, if I may.

RE CROSS EXAMINATION:

QUESTIONS BY MR. MCDONALD:

Q. I believe you testified that Edna Smith stated that in your judgment the practice of sterilization then being carried on in Aiken was wrong? A. Yes, because she -- she feel the women of South Carolina should have their own ability of deciding whether they want to have more children or not and no doctor shouldn't pressure them into being sterile.

Q. Is that one of the main things you talked about? A. Yes.

Q. Let me ask you this. Did Dr. Pierce tell you that in order to deliver your child you would have to agree to be sterilized?

[47] MR. KALE: I'm going to object to that.

MR. MCCUTCHEN: I think that's improper and I think it should be stricken from the record. I don't think that's germane at all.

[48] MR. KALE: May it please the Panel, we have subpoenaed Mr. Herbert Buhl and we have asked him to bring certain documents along with him to this hearing. I would like a slight recess

for maybe fifteen minutes so I can see these documents that he has brought along and examine them if that's admissible with the Panel.

MR. MCCUTCHEN: All right, sir.

(Recess)

MR. MCCUTCHEN: All right, sir.

MR. KALE: I do have one thing that I would like to put in evidence and that's the Summons and Complaint in the case of Doe v. Pierce, for purposes of showing that the attorneys for Plaintiffs in that action did request attorney fees.

MR. MCDONALD: I see no reason for it to be in evidence, it's a public document. I object to that on the grounds of relevancy as well as the Court can take judicial notice of it.

MR. MCKEOWN: Do you also object to it on the grounds it is obviously a copy of the original?

MR. KALE: No, sir, we have the original.

MR. MCDONALD: No.

MR. KALE: We have a certified copy of it if I can find it.

MR. MCCUTCHEN: The Panel will accept it.

[49] MR. KALE: This is all involved in the Aiken Sterilization case and there were attorney fees asked for, so we feel solicitation of clients was for personal gain or, at least, for the ACLU's personal gain.

MR. MCDONALD: Well, on that ground we certainly would object since the ACLU is not the Respondent in these proceedings. There is no showing there has been any connection in that complaint.

MR. MCCUTCHEN: Let the record show that the Panel will receive [sic] it for whatever it's worth. Frankly, we have some misgivings about it but we will receive it for whatever value we think should be assigned to it.

(Thereupon Complainant's Exhibit number C-2 marked in evidence)

MR. KALE: At this point the Complainant would rest its case.

MR. MCDONALD: We would like to move that the Panel dismiss, strike or quash the complaint, whatever the appropriate phrase is, on several grounds. Number one is that the complaint fails to allege a violation of any disciplinary rule. There is no recitation, at any point in the complaint as to any specific provision of

any law that exists in the State or any Canon of Ethics in the disciplinary rule contained in the Canon of Ethics which the Respondent has allegedly violated. We contend that that's tantamount to [50] indicting someone for committing a crime in violation of the Code of Laws in the state, or in violation of one of the chapters in the Code. I think that we are clearly entitled to more specifics than that in that the complaint -- to use the civil analogy -- is demurrable on its face for those reasons. We contend that the only conceivable disciplinary rule that could be involved would be rule 2-103a. And it's perfectly clear from the testimony which Miss Williams has introduced that -- and from the letter which forms [sic] the basis of the charge, there could be no violation of that disciplinary rule. The letter does not recommend employment of any particular attorney, and it does not recommend that the respondent, or associates, assist her; in point of fact, the law suit which has been filed, as the Panel will see, conclusively demonstrates that Miss Smith was not involved in that lawsuit and did not accept any employment in connection

with it. Furthermore, there is nothing in the letter that shows that the advice was not solicited. Rather, the letter affirmatively shows that there had been prior contact, and, moreover, Mrs. Williams herself, testified that the meeting had been arranged through someone else, and that there was prior contact before that letter was written. So, this is not unsolicited advice, it grew out of prior contact. And finally, the crucial element of solicitation -- that phrase has been used in prior decisions in connection with the [51] Canons which existed before the Code was adopted in this State, all involve an element of personal gain on behalf of the attorney who allegedly solicits. There is no evidence that any such financial gain, or expectation thereof, was involved in this case. In point of fact, Mrs. Williams' own testimony was that there was no talk of any fee going to Edna Smith. Edna Smith does not represent her and never offered to represent her for a fee. But I think it's perfectly clear that that element is missing so that the charges, really, on their face, and certainly in light of the testimony, don't make out even a prima

facia showing of a violation of the disciplinary rule. So, we would move, for those reasons, that the complaint be dismissed.

MR. KALE: May it please the Panel, we believe that the complaint does allege a violation. It specifically states that this is solicitation in violation of the Canons of Ethics. And, of course, the solicitation provisions of the Canons of Ethics are Canon 2. Now, under the disciplinary rules of Canon 2, there are several which we feel are applicable in this particular case; DR2-104, Subsection 5, says, "A lawyer who is giving unsolicited advice to a layman that he should obtain counsel or take legal action, shall not, except employment resulting from that advice, except that -- Number 5 says:

(Thereupon number 5 published)

[52] MR. KALE: (Continuing) Now, this action which the ACLU is bringing in this sterilization case, the Doe v. Pierce Action, was a class action. They were contacting several people in order to get these people to bring the action. And specifically the Canons state may accept but shall not seek. And I think we have had plenty of testimony here today from

Mrs. Williams that there was actually a very active case of seeking to get her to bring the action and to let the American Civil Liberties Union bring this action for her. Other disciplinary rules which we feel like are appropriate here would be DR2-103-1, Subsection d and 5 we feel are applicable here. A lawyer shall not knowingly assist a person or organization that recommends, furnishes or pays for legal services to promote the use of his services or those of his partners or associates, however, he may cooperate in a dignified manner with the legal service activities of any of the following provided that his independent professional judgment is exercised in behalf of the client without interference or control by the organization or other persons. Then down, Subsection 5 it talks about a non-profit organization that recommends, furnishes or pays for legal services to its members or beneficiaries but only in those instances and to the extent that controlling constitution interpretations at the time of the rendition of the services requires the allowance of such service activities [53] and only in the following conditions unless

prohibited by such interpretation. And the primary purpose -- and then Subsections a and c, "the primary purposes of such organizations do not induce [sic] the rendition of legal services; and c, "such organization does not derive [sic] a financial benefit from the rendition of legal services by the lawyer. I think it's apparant [sic] from the letter that Edna Smith was soliciting for the American Civil Liberties Union, that she was seeking to represent this party and not accepting the services, we feel like this would be a violation and we feel like the case has been made out in this instance.

MR. MCCUTCHEN: The Panel is of the opinion that the testimony of the Respondent together with the letter certainly, at this point of the proceeding, and the testimony raises a sufficient issue at this stage of the proceeding to go forward. So, at this point, we deny your motions.

MR. MCDONALD: All right, sir. Before we proceed, if we may, we have several witnesses, and we have character witnesses who are members of the local Bar and we would request that we be allowed to call them out of turn so that they can return to their businesses. Would there be any

objection to that?

(Discussion off the record)

MR. MCCUTCHEN: I think you may take them up out of order. You don't object, do you?

[54] MR. KALE: No. I don't know what their purposes are for introducing; if it's for good character, we have no objection.

MISS EDNA SMITH, the Respondent, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

QUESTIONS BY MR. MCDONALD:

Q. What is your name, please? A. Edna Smith.

Q. Miss Smith, where were you born, and when? A. In Yamasee, South Carolina on June 27, 1944.

Q. And are there other members of your family? A. Yes, there are. I have three sisters and three brothers.

Q. And are your parents alive? A. My Father is deceased, my Mother is still living.

Q. When did your Father die? A. Several years when I was very small. He was fifty - sixty years old.

Q. What employment, if any, did he have when he was alive? A. He was a small-time farmer.

Q. Was he a property owner there?
A. No, he was not.

Q. He was a sharecropper? A. Yes.

Q. What about your Mother, did she have employment at that time? [55] A. She did various jobs consisting of domestic work in hotels, peoples' homes, and she worked in restaurants [sic].

Q. Tell me your education, where you received it and the extent of it. A. I attended high school at -- high school in Beaufort, South Carolina, and I also went to two years of junior college at Madder Junior College at Beaufort, South Carolina. I transferred from there to the University of South Carolina here in Columbia which I graduated in 1966. I subsequently went to the University of South Carolina's Law School in 1969, which I graduated in 1972.

Q. Did you receive any scholarships or financial assistance as you were going through school? A. Yes, I did. I received a number when I was in high school from various people; in fact, that was my primary means of getting an education. The high school was a boarding institution. I

also received the same thing at the junior college and at the University of South Carolina undergraduate school and also two years of law school.

Q. Did you have employment, fulltime employment prior to attending law school?
A. Yes, I did.

Q. What was that employment? A. I worked for the South Carolina Counsel on Human Relations which is headquartered here in South Carolina at various [56] positions. I was Chairperson of a group called the Student Counsel on Human Relations out of the same organization. I also served as executive secretary during the time I left the University in 1966, and before I entered law school in 1969.

Q. Did you have employment during the time you went through law school too? A. The first year I did not work but I did work parttime during my second and third year at various jobs at the university law school.

Q. All right, now, when did you graduate from the law school here? A. May, 1972.

Q. And did you take the Bar exam thereafter? A. Yes, that following summer.

Q. And when were you admitted to practice here? A. September, 1972.

Q. What courts are you admitted to other than the Supreme Court of South Carolina? A. The Federal Court of South Carolina, the Federal District Court, and the Fourth Circuit Court of Appeals.

Q. Now, have you been involved in any public service work other than with the Human Relations Counsel? A. I've had various jobs, or doing various things on a volunteer basis as well. I served as student counsel with the upward [57] bound program for students who may not get to college but who had the potential, in 1966, at the University of South Carolina. I have participated in various projects; voter registration on a volunteer basis. I became a member of the Greater Columbia Literacy Counsel when it was first formed in Columbia in 1969, I think, to teach people to read and write in South Carolina.

Q. Was this work with the Literacy Counsel mainly with minority groups? A. It involved minority groups and non-minority people, anyone who could not read and who requested such services.

Q. What about the voter registration work that you spoke of? A. That was

primarily with minority groups even though it did not always involve minority groups.

Q. Have you told me all of your public service, volunteer or other work? A. Other than with the counsel through which we did several projects even while I was in school. The college students get together and go into the community to conduct surveys for day care centers, to even help the community on a specific project that was trying to get a day care center or try to provide services to the people to get various statistics in reference to setting up programs, and also to register people to vote or to educate them in their rights to register to vote and things of that nature.

[58] Q. Have you had occasion to be on the faculty of any college or university? A. Yes, I have. In 1972, September of that year, I became a faculty member at Allen University here in Columbia, from 1972, September, through May, '73. In September of '73, through December '73, I taught a course at Columbia College here in Columbia. And in 1974, I had a short course at the University of South Carolina for life enrichment program for senior citizens.

Q. Did you say what you taught at

Allen or Columbia College? A. No, I did not. I taught constitutional law, general principles of [A]merican law and consumer seminar [sic] wherein there was a grant between the two colleges from HEW, Benedict and Allen, to educate people on various aspects of consumer protection, housing problems, and getting employment, and generally spending their money and getting credits, just general information, seminar [sic] for the students at the two universities.

Q. What about Columbia College? A. At Columbia College it was a course wherein several areas of the law were dealt with in a general basis to give the individual who is not trained in law and may not go to law school, some idea of ramifications of law, and to explain to them some various general principles. It was called Principles of American Law.

[59] Q. Do you have any involvement with the American Civil Liberties Union? A. Yes, I do. I am a member of the Board of Directors and also an officer on the Board.

Q. When did you become an officer and a member of the Board? A. I think it was in 1972, I first served as an at large

member of the Board. In 1973, I became an officer, vice-president, and I have held that position since that time.

Q. Are you compensated for the time you spend on behalf of the American Civil Liberties Union? A. No, I'm not, it's purely voluntary.

Q. Do you sometimes incur out-of-pocket expenses for what you do for the American Civil Liberties Union? A. Yes, I do.

Q. Are you compensated for that? A. No, I'm not, It's a donation of my time to the organization.

Q. Now, will you tell me whether or not you know Marietta Williams who testified earlier this morning? A. Yes, I met her once.

Q. Tell me how you came to meet her. A. I was contacted by a member of the South Carolina Counsel on Human Relations for whom I served as a consultant.

Q. Who was that individual? A. It was Ed McSweeney who worked for the South Carolina Counsel For Human Rights. And he told me that he wanted me to [60] investigate the situation in Aiken, South Carolina with reference to the sterilization and a request that the Counsel had received.

Q. Now, was this during the time when you were employed by the Counsel? A. Yes, I served as legal consultant for the South Carolina Counsel on Human Rights. And that was in connection with that capacity that they contacted me.

Q. And tell me what you did? A. He told me to contact a Mr. Gary Allen in Aiken, whom I did not know, and to call him and he would arrange for me to talk to people in Aiken who had been sterilized, and to make a report back to him. He told me that he did not have Mr. Allen's telephone number but to get it from Mrs. McKnight, a lady here in Columbia, whom I did call and received Mr. Allen's telephone number. I think his number, at the time, was unlisted. I called him and told him that I would contact him -- that I was contacted by the Counsel -- and I was to contact him in reference to the situation in Aiken, which had also been publicized in the newspapers. And he told me that he would set up a meeting with women who had been sterilized, in his office in Aiken, for me to come and talk to him. And he gave me directions -- a time was set up, and a date, and he gave me directions on how to get to Aiken and how to recognize where he was and who he was.

[61] Q. You say he said he wanted you to talk to them. Did he tell you any particular things he wanted you to discuss? A. Ed McSweeney did.

Q. What were you to talk to them about? A. About the recent sterilizations that had been reported in Aiken, to find out if, in fact, this was going on, and to generally get the story from the people who were involved. This was primarily in reference to the Counsel's request, and also the Counsel was involved in the study of weelfare [sic] in South Carolina, the weelfare [sic] program in South Carolina.

Q. All right, so what happened thereafter, after the conversation with Mr. Allen? A. A meeting was set up and I went to Aiken with Mr. -- and met Mr. Allen at his office. He introduced me to the people who had been there. And I discussed with him -- you know, I identified myself and told him who I was. And I talked to the ladies to find out, you know, what had happened, if they were involved, and general questions about the sterilization itself.

Q. Who was at that meeting? A. There were several individuals whom I don't know but I do remember Mr. Allen was there;

another lady by the name of Dorothy Waters, who, I think, lived in Aiken; Miss Marietta Williams was there along with either her mother or grandmother, some relative of the family; a Miss Virgil Walker; and some [62] other people whom I don't know. There were also some news media people.

Q. All right. Now, did you have any conversation with Marietta Williams at that meeting? A. I did talk to her in Mr. Allen's office; everyone was sitting around, and I asked -- we did have a conversation where I talked to her and she talked back to me.

Q. Tell me, describe this office, if you will. A. It is a trailer, two or three room trailer, and we met, I guess, in the living room area which also serves as Mr. Allen's office. It is on his car lot. There were several couches and a few chairs in a very small area of a small trailer. And that's where we all met and talked about it.

Q. Excuse me, did you have any conversations with her that didn't take place in that office? A. No, I did not.

Q. Tell me what the nature of the conversation with her was. A. The nature of the conversation with Mrs. Williams was to the effect, either I introduced myself

as Edna Smith from Columbia, South Carolina, and asked her her name and if she had been sterilized. She said she had. And I asked her if she wanted to discuss it. And she went into details about the doctor involved, when the incident occurred, when she first went to see the doctor, and how the issue of being sterilized came up before her baby could be delivered. She went through a [63] chronological statement of what took place and to explain to me that she had, in effect, been sterilized, and that her baby was dehydrated, I think she mentioned, and it was now under doctor's care and that she was concerned about her baby's health.

Q. Did you identify yourself as an attorney? A. I think I told her that I was.

Q. Did you identify yourself as somebody associated with the ACLU? A. I may have mentioned it to her. Now, I made a general conversation to the group as a whole wherein I introduced myself [sic] -- Mr. Allen indicated my name and I introduced myself. I don't recall if I told her that I was an attorney with the ACLU but she was a member of the group, not specifically to Mrs. Williams, but I did mention that I was an attorney.

Q. Did you offer to represent Mrs. Williams in a suit against Dr. Pierce?

A. No, I did not. In fact, I did not even mention a suit being brought by my [sic] for anyone at that meeting in July, either to Mrs. Williams or any of the other ladies, regarding the situation.

Q. Did you discuss with her any fee which you might charge in connection with representing her in any suit? A. No, I did not.

[64] Q. All right. Now, did you have occasion to talk with Mrs. Williams thereafter? A. I did. That was in reference to a letter which I had sent to her.

Q. All right, now, the letter you referred to, I believe, is the August 30, 1973 letter? A. That's correct.

Q. To Mrs. Williams? A. Yes.

Q. Tell me how you came to write that letter to her. A. This was as a result of receiving correspondence from Mr. Gary Allen in Aiken that the ladies who had been sterilized were interested in bringing legal action. This was also as a result of being informed by one of the board members of the South Carolina Chapter of the American Civil Liberties Union that

that the organization wanted to pursue the issue as far as litigation was concerned. This was also as a result of having conversation with a member of the National Organization in New York, who indicated the ACLU was interested in pursuing litigation as the local organization had indicated, and asked me to contact them.

Q. Now, you say the ACLU was interested in pursuing it. Did they receive a request from someone to represent them in connection with litigation against Dr. Pierce? A. Yes, they did, from Miss Dorothy Waters who sent the letter in.

[65] Q. Tell me about that letter. Have you seen it? To whom was it addressed? A. It was addressed to the American Civil Liberties Union. I have seen it but I do not recall, word for word, what it said but the effect of it was, I am interested in talking about -- talking with the ACLU about the operation that was performed on me and I would like, you know, to have it explained as to what my rights are and what is involved. That was the essence of the letter.

Q. Was that letter written after this July meeting? A. Yes, it was.

Q. And was that letter written before the August 30 letter?

MR. KALE: May it please the Panel, I wonder if they intend to introduce these letters.

Q. (By Mr. McDonald) Do you know where that letter is? A. I think it's probably in the possession of the American Civil Liberties Union.

MR. KALE: Well, it seems like to me that's the best evidence in the case if they want to bring in the contents of certain letters I think they ought to introduce them, the letters themselves, rather than someone testifying from memory on these things.

MR. MCCUTCHEN: I think the letter is the best evidence.

MR. MCDONALD: We will attempt to secure a copy [66] of the letter and then we will introduce it.

Q. (By Mr. McDonald) Did you have any conversations with Gary Allen? You talked about a letter from Gary Allen and a letter from one of the Plaintiffs in the Doe v. Pierce case. Did you have any conversation with Gary Allen prior to writing the August 30 letter? A. Yes. He called the office twice in reference to that as well

as with reference to other problems he wanted legal assistance on. And he asked me then what could the ladies do about bringing litigation, some of them were interested in bringing suit for the sterilizations. And I told them if they were to send their request into the American Civil Liberties Union.

Q. And did the request from Mrs. Waters follow that conversation? A. Yes, it did.

Q. Did you have any conversations thereafter with Mr. Allen? A. I'm not sure. I talked to him on different occasions. I'm not sure when the letter came in. He has called several times prior to the August 30 letter but I had numerous conversations.

Q. Was the August 30 letter in response to those letters from Mr. Allen? A. Yes.

Q. Has he asked you to write the ladies and have the ladies represented by the ACLU --

[67] MR. KALE: I think he is leading the witness and testifying as to what someone may have said.

MR. MCDONALD: The witness will be here. I think she can explain what

transpired that she responded to.

MR. MCCUTCHEN: I think the witness could simply testify that she had the conversation. I think it is hearsay to go into the conversation.

MR. MCDONALD: It wouldn't be for the truth of the matter alleged, the fact that he, in fact, did say those things. I think that's clearly an exception to the hearsay rule. It's proof of utterance [sic], not proof of the matter. I think we can show what he said and what she acted in response.

MR. MCCUTCHEN: I'm inclined to say that you invade the hearsay rule. I think the witness can testify that she had the conversation, and you can put the person up who will testify as to what he said. I don't think this witness can go into a discussion as to what a third party told her.

MR. MCDONALD: What that does, it deprives her of the opportunity to explain why she did what she did. We are not offering it to prove the truth of the matter but that utterance was made. That's the basis of her action.

MR. MCCUTCHEN: I think you have accomplished the same thing by asking the

witness if she had a conversation [68] and what she did as a result of the conversation. I think it's implicit without going into the details. She can testify that she had the conversation and as a result of the conversation what she did.

MR. MCDONALD: We would like to preserve the record.

MR. MCCUTCHEN: Surely, your position is preserved.

MR. MCDONALD: Our offer of proof is that she was requested by Allen to correspond with them and to write the letter she wrote.

Q. (By Mr. McDonald) You had conversations with Mr. Allen and based upon those conversations you wrote the letter of August 30, is that correct? A. Yes.

Q. Now, these individuals, these women you met with who had been sterilized by Dr. Pierce, were you able to observe whether or not these were people of substantial education? A. In my judgment, from talking to the persons, I determined that most of them had very little educational training and background.

Q. All right. Now, did you talk with Mrs. Williams after you wrote the August, 1973 letter? A. Yes, I did. She

called my office.

Q. All right, now, tell me when you talked with her. A. I believe it was August the 31st, the day after I wrote the [69] letter, I received a collect call from her and she said that she was calling in reference to the letter. And she asked me what was involved in a lawsuit. I explained to her the purpose of why lawsuits are brought, to protect the individual's rights, and that this was for the sterilization that was performed. She had several questions and then she said, to the effect, that she had already signed a release with Dr. Pierce, that she would not bring any action against him. This was at the request of either her mother or her grandmother and Dr. Pierce. She also told me that she was not interested in being interviewed for a magazine, which was also in the letter. After that, perhaps a couple of hours later that afternoon, she called me again and was saying that she was thinking about the matter and was just wondering, you know, if maybe she could change her mind. She told me then that she had regretted signing the release but that she was living with her mother or grand-

mother and was dependent upon them for helping her with her children, and since they had gotten her to do this she didn't really think that she could -- that she should change her mind and go against them, and that she had regretted that she had done that, but since it was her mother or grandmother that she would probably abide with that.

Q. Do you represent Mrs. Marietta Williams in any capacity? A. No, I do not.

[70] Q. Have you accepted any employment from her? A. No, I have not.

Q. Have you ever offered, personally, to represent her in any capacity? A. No, I have not.

Q. In your discussions with the various people who were present at that first meeting at Mr. Allen's office now, did you observe whether the women who had been sterilized were aware of their rights under the constitution? Did it appear from your discussions with them?

MR. KALE: Objection, that's a conclusion on her part and I don't see what relevance that has. It certainly is an opinion on her part which I don't think is proper for her to make.

MR. MCDONALD: We would try to tie that up later on. Of course, Canons, of course, not merely permit but place upon the attorneys a duty, ethical responsibility to advise layman about their rights and to make counsel available. Of course, counsel went into great length about that, if anything Miss Smith did was in the discharge of that duty, under Canon, I think is clearly relevant in these proceedings. And her perception of these individuals is, of course, absolutely germane to the issues here.

MR. MCCUTCHEN: The Board is of the opinion that you will be permitted to ask the witness simply if the people [71] with whom she talked are people of limited education. I think she has already indicated this. But other than that, as to what impressions she may have drawn, I don't think that that's proper. And I'm not all sure, the Panel is not at all sure that the activities with reference to others other than Mrs. Williams would be particularly germane.

MR. MCDONALD: All right, sir, if I ask her not what her impression was but whether or not she observed if Mrs.

Williams was aware of her rights under the constitution would that be less objectionable?

MR. MCCUTCHEN: Well, I think that she could tell you what discussions she had, what she observed about Mrs. Williams.

MR. MCDONALD: Well, may I ask the question?

MR. MCCUTCHEN: Sure.

Q. (By Mr. McDonald) Can you respond to the question which I requested the Panel to let me put to you? A. Would you repeat that, please?

Q. Did you observe whether Mrs. Williams was aware of her rights under the Constitution of the United States? A. No, I did not observe that she wasn't [sic] aware of her rights; in fact, I don't think she knew what the rights were.

MR. MCCUTCHEN: Of course, I think that's going a little far, counsel. I think you can have the witness relate any discussions that she had. But it seems to me the [72] expression of her opinion as to what Mrs. Williams did or did not appreciate wouldn't be proper.

MR. KALE: We would move to strike that. Marietta Williams was up here and

they could have asked her that question. We don't think it's a proper one for her to answer.

MR. MCDONALD: Let me respond to that if I may. Of course, what we are involved -- this is a quasi criminal proceeding and we are talking about the motive, which is an aspect of the finding of violation of any disciplinary rule, and we are talking about motive and intent, and that's precisely what my questions to Miss Smith go to. And I think it's clearly relevant, I don't think it ought to be struck.

MR. MCCUTCHEN: Well, counsel, I think you have got a deeper problem than that. The Panel doesn't object to your questioning the witness as to exactly what went on discussionwise between this lady and Mrs. Williams but I don't think it's proper to ask this witness to express an opinion as to what Mrs. Williams did know or didn't know and what she realized and what she didn't realize. I think she can testify as to the observations she made as to what took place. But I don't think she can inject her opinion as to what Mrs. Williams knew or didn't know, I don't think that's proper.

[73]MR. MCDONALD: All right, sir.

Q. (By Mr. McDonald) Miss Smith, did the women at that meeting who had been sterilized tell you that they had been coerced in any way into submitting to sterilization?

MR. KALE: Objection, that's hearsay.

MR. MCDONALD: Well, now, Mrs. Williams made certain representations about coercion [sic] and this all goes to prior inconsistent statements and would be an exception to the hearsay rule.

MR. CRUM: Your question, counsel was, did the women.

MR. MCDONALD: Well, let me just rephrase it, sir. Thank you, sir.

Q. (By Mr. McDonald) Did Mrs. Williams indicate to you that her sterilization had been coerced by Dr. Pierce? A. Yes, she did.

Q. In what way? A. She told me that during the course of going to Dr. Pierce, after she discovered that she was pregnant, -- he was her obstetrician for previous deliveries -- and that it was mentioned sometime between the time she went and the delivery of the baby that if he delivered the baby that she would

have to consent to being sterilized before he would do such.

MR. KALE: May it please the Panel, I don't know what's the relevance, or whether the sterilization was [74] coerced or not has to do with this particular proceeding we have today. And I would move to strike this testimony as not being relevant to the issues germane to this proceeding.

MR. MCDONALD: It goes to impeachment.

MR. MCCUTCHEN: The Board is of the opinion that we will leave the question, we won't strike it. It may have some relevance insofar as credibility is concerned. We will leave it in, at this time, for whatever it might be worth.

MR. MCDONALD: Thank you, very much. Would you answer any questions put to you?

(Discussion off the record)

CROSS EXAMINATION:

QUESTIONS BY MR. KALE:

Q. Miss Smith, would you please tell us what your responsibilities are with the American Civil Liberties Union. A. I serve as Vice-President of the American Civil Liberties Union Board of Directors.

Q. Go ahead. A. And in that capacity I sometimes preside over meetings or

I sometimes arrange meetings for programs that the ACLU sponsors. And I have also headed the committee [sic] on welfare [sic] the welfare [sic] committee [sic] which involves relating to welfare [sic] issues of the ACLU's as a -- representing the ACLU as a member of the groups that are concerned with welfare [sic] issues.

[75] Q. Do you represent clients for the ACLU in litigation? A. I have not represented any client for the ACLU in court. I have represented clients in other legal matters that did not involve litigation.

Q. Are you a cooperating attorney with the ACLU? A. Yes, I am.

Q. Now, when you went to Aiken, South Carolina how did you become acquainted with Mr. Gary Allen? A. I was given his name by the gentleman from the Counsel [sic] on Human Relations who told me to call him. I had never met him before. I subsequently called him and told him about the call that I had received in reference to talking to the women. And I met with him at his office in Aiken for the first time.

Q. What is Mr. Allen's involvement in the sterilization problem in Aiken?

A. I got the impression from him that he,

because of prior contact with the Counsel [sic] to represent him in matters, had requested that we come down to see what could be done. And he subsequently wrote to me and called me in reference to representing -- getting representation for the ladies who had been sterilized. I do not know of any subsequent involvement other than in those communications in 1973.

Q. You said that he called you about representing. Did he also talk about you being possibly one of the attorneys? [76]
A. No, he did not. He indicated that the ladies were interested in bringing suit for sterilization.

Q. Just tell me did he indicate that you should be an attorney also in this matter? A. No, he did not.

Q. Is he a member of the ACLU? A. I don't really know.

Q. You don't know what connection he might have with the American Civil Liberties Union? A. No.

Q. When you went to Aiken, South Carolina I believe you testified that there was a Dorothy Waters and a Virgil Walker also present at the meeting? A. Yes.

Q. Who were the other ladies besides

those two and Marietta Williams that were present? A. Those were the only ones to whom I talked. There were other people whose names I didn't know. All these people were new to me. There was Mr. Allen and his secretary there. I don't know of any other ladies who were there that had been sterilized. I didn't get the names of the other ladies I did not talk to. Those were the three to whom I talked. I do think that Mrs. Williams' mother or grandmother was also there, I do not recall her name.

Q. Was Shirley Brown present? [77]
A. No.

Q. She was not present? A. No, she wasn't.

Q. Now, did you advise Mrs. Williams of her legal rights at the time you met her in July? A. I told the group in general, and I might have told Mrs. Williams the same thing, that they had certain rights under the constitution, legal rights under the constitution.

Q. Did you discuss the recourse they had for vindicating or enforcing these legal rights? A. I discussed that with Mr. Allen in the presence of the group as far as what their rights might be in my opinion.

Q. So that they knew that they could bring a lawsuit? A. I told Mr. Allen in response to his questions in front of Mrs. Williams and other members of the group that there were certain legal remedies. I did not indicate to them that they could bring a lawsuit or that they should bring a lawsuit. I did not tell this to Mrs. William [sic] directly or to any of the other ladies directly. We discussed this with Mr. Allen.

Q. They knew they could bring a lawsuit. Did they know they could get some money damages from a lawsuit? A. I did not tell them. I did tell Mrs. Williams this in response to her telephone conversation on about August 31st.

Q. Okay. Did anyone else at that meeting talk about money [78] damages? A. I do not recall. There were several other people who were also holding conversations with the women and I do not know what was going on.

Q. Did Mr. Gary Allen ask you a question as to whether they could recover money damages? A. I do not recall, at that meeting, that that was mentioned. In fact, I don't think we got into the details of what a lawsuit involved or what. We were gathering information to find out if this had indeed happened from the ladies who were involved.

Q. What did you tell Marietta Williams about what rights she had? A. I first got her story from her. I asked her, you know, did she consent to this or was she coerced. And I told her, in response to

her positive answer that she was, that if she was coerced that was not the proper procedure and that she could, you know, she had legal recourse against being forced into doing something. I was explaining to her my interpretation of what she had told me in reference to the operation.

Q. Did you tell her that sterilization was wrong? A. No, I did not tell her that sterilization was wrong.

Q. Did you tell her that what the doctor was doing was wrong? A. I did not tell her what the doctor was doing was wrong. I [79] said, if you had -- as she had said -- been coerced into being sterilized against her wishes that I thought that that was wrong.

Q. When did the ACLU decide to support a legal action in this case? A. I do not remember the exact date but it was communicated to me either in July or August, the latter part of July or the first part of August, from one of the Board members of the South Carolina ACLU that they were interested in getting involved in the matter. And in August, prior to the letter, I talked to a lady who called my office from the National ACLU. So it was possibly in August of '73.

Q. Now, wasn't this letter that you sent to Mrs. Williams an attempt to get her to bring the lawsuit so that they would have parties to bring the lawsuit?

A. No, that letter was not an attempt to get her to bring the lawsuit. I was told to inform her that there was an organization who was willing to assist her if she was interested in doing that. And I wrote the letter to her as a result of that.

Q. Well, you were writing her as an attorney and telling her that she had legal recourse and that the ACLU would bring the suit for her. A. Well, even though I signed the letter as an attorney I was writing to her on behalf of the ACLU as a member.

[80] Q. Well, there was no doubt in your mind, was it, that you had told her that you were an attorney and that she was thinking of you as an attorney, is it?

MR. MCDONALD: I object to what she thought she may have thought she thought.

Q. (By Mr. KALE) Is there any doubt in your mind that Marietta Williams thought you were an attorney?

MR. MCDONALD: I object to what -- no, go ahead.

MR. MCCUTCHEN: Yes, I think that's improper, she can relate what she told her.

Q. (By Mr. Kale) Did you tell Marietta Williams that you were an attorney? A. I think I introduced myself as Edna Smith from Columbia. I may have told her I was an attorney.

Q. And you signed this letter as an attorney, didn't you? A. Yes, I did.

Q. Now, in this letter it says that the American Civil Liberties Union would like to file a lawsuit in your behalf for money against the doctor who performed the operation, is that correct, is that what you said? A. That sounds like what I said.

Q. I would like for you to look at that letter. Is that the letter that you wrote? A. Yes, it's a copy of the letter.

Q. This is a copy of the letter that you wrote? [81] A. Yes.

Q. Now, I believe you previously testified that there was a -- was there a letter from a Dorothy Waters? A. Yes, there was one.

Q. Did that come to you? A. No, it did not come to me.

Q. Do you have that letter? A. No, I do not. I have seen it.

Q. Supposedly this letter said that Dorothy Waters wanted to bring an action?

A. As far as I can remember the letter stated that I want the ACLU to represent me. Now, the phrasology [sic] might be different, I don't recall the exact words.

Q. This is Mrs. Dorothy Waters?

A. Right, this is Miss Dorothy Waters.

Q. You don't have any information as to whether Marietta Williams wrote that letter or wrote a letter like that, do you?

A. No, I do not have --

Q. Did you ever receive a letter from Marietta Williams to that effect? A. No, I did not.

Q. Did Dorothy Waters ever bring an action? A. I do not know if she is a party in this suit.

Q. Do you know who is a party in this suit? [82] A. I think the plaintiff is listed as Jane Doe and I think that involved one of the ladies, Mrs. Virgil Walker, and the other is Mary Roe. I'm not sure who is who but I think that the two are -- there is a Virgil Walker and Mrs. Shirley Brown.

Q. Okay. So Dorothy Waters never brought an action herself? A. I don't think she is a named plaintiff.

Q. Do you know what connection Gary Allen had with Marietta Williams? A. I do not know what relationship or connection he had, but when he called me I assumed that he either had her permission or he was acting on her behalf and on behalf of the other ladies as well.

Q. What led you to think that? A. The fact that he knew them; that in the conversations with him at his office he said he had requested several people to investigate. He had sent requests to several places and he was trying to get something done about what was going on. And this was his practice for any other thing that went on.

Q. Now, I believe you testified that you told him to tell the women to send their request in. A. This was after he asked me about their bringing a lawsuit. I told him to have them, if they were interested, to send the request in.

[83] Q. Did you ever receive a request from Marietta Williams?

MR. MCDONALD: I believe she has answered that question once.

MR. KALE: I would like to ask it again.

MR. MCDONALD: Well, I see no reason to keep going over the same thing over and over.

MR. MCCUTCHEN: Yes, I think she has answered it.

Q. (By Mr. Kale) Well, why, if you never received a request from Marietta Williams, did you feel it was necessary to write her a letter? A. I did this as a result of conversations with Mr. Allen because he said the women were interested -- and at that time, to my knowledge, we had received one request. And the ACLU said they wanted to get the women who were involved.. And I did know from talking to her that she was one of the ladies who had been sterilized.

Q. But Mr. Gary Allen had no responsibility with or connection with Marietta Williams. He didn't represent her in any way did he? A. I didn't know that. He was the one who introduced me to her as well as the other ladies, I didn't know anyone in Aiken. So when se salled [sic] I assumed that he was acting on her behalf or knew what her intentions were.

Q. Well, who else did you write letters to besides Marietta Williams? [84] A. To --

MR. MCDONALD: Well, I would object to that, I don't know that -- it's irrelevant, it's not involved here. What's involved here is a letter. I don't know that other letters that she may or may not have written have any relevance here.

MR. KALE: I believe that she testified that she was acting at the insistence of Gary Allen and this motivated her writing a letter to these women, and I want to see who else was written to see if she carried out this motivation.

MR. MCDONALD: Well, I think this motivation obviously was carried out because the letter was written, and any other letters are irrelevant to these proceedings.

MR. KALE: Well, Your Honor, I think, if she didn't write but one letter I would somewhat question her testimony. I think its relevant to see if this wasn't what induced her to write this letter.

MR. MCDONALD: She told what induced her to write the letter.

MR. KALE: I think I can go in to

examine it, whether this is a truthful statement.

MR. MCDONALD: But she answered truthfully that she did write the letter and I think that's what's relevant.

MR. KALE: May it please the Panel, I think they [85] have gone into extensively areas involving communications with other people; Dorothy Waters, Gary Allen, letters that they have not presented here at this hearing. I think it's something that they brought in. I think I should have the opportunity to examine this because it is going towards the motivation which they have presented in her defense.

MR. MCCUTCHEN: Counsel, I realize the difficulty a bit ago, we got into with some discussions with others other than Mrs. Williams. I think we limited, to some extent, the examination of counsel for the Respondent. The thing that troubles the Panel somewhat is that you have based your complaint on this one letter of August 30, 1973, that the Respondent had written to Miss Williams. And I'm wondering if we aren't getting a little far afield now in going into correspondence with these various other people.

MR. KALE: The only extent is that I want to see if any other letters were written, I don't care what they said. I just want to know -- that's the only question I had to ask.

MR. MCCUTCHEN: Well, suppose you let her answer and let's discontinue the course of this. We can take it for whatever it's worth.

MR. MCKEOWN: Is your purpose just to determine intent or motive in writing the letters?

[86] MR. KALE: They have presented her motive of writing a letter and I'm just examining that motive.

MR. MCKEOWN: It may have some bearing on whether she intended to solocit [sic] but it would not --

MR. MCCUTCHEN: Suppose [sic] you just limit it to whether or not she wrote other letters. Let's don't get into the letters themselves because I really don't think it has any relevance insofar as the contents of the letters are concerned.

Q. (By Mr. Kale) In response to Mr. Allen, did you write more than one letter?
A. Yes, I did.

Q. Other letters to other women besides Marietta Williams? A. Yes.

Q. Had you had any contact, prior to this time, or do you know if anyone had any contact with Virgil Walker? A. Prior to what time?

Q. To writing the letter of August 30? A. Yes, I had met Virgil Walker in July.

Q. Did -- had Mrs. Walker indicated that she would like to bring a suit, at that time?

MR. MCDONALD: I object to that on the grounds of relevancy, we are trying something entirely different.

MR. MCCUTCHEN: I really don't think that has any relevancy to it. [87]

MR. KALE: If it please, we feel like that perhaps the party, Mrs. Virgil Walker, had some hesitancy about bringing a lawsuit and we feel like this may have been a motivation for Miss Smith continuing to contact other parties in order that they might secure a party who had been sterilized to bring the action. I think this is relevant to the intent and motivation involved in writing the letter and I would like to go into it.

MR. MCCUTCHEN: The Panel is of the opinion that you have elicited from the witness the fact that she wrote other letters.

I think we are going to unduly prolong this if we attempt to take up these other people. I think you should limit it to the relations and the dealings that she had with Marietta Williams.

Q. (By Mr. Kale) Miss Smith, do you know if it's a custom of the ACLU, when they bring suits of this character for Civil Rights, or whatever, to ask for attorney fees? A. I had been told that recently that ACLU has asked for attorney fees in civil liberty cases that they have brought.

MR. KALE: Okay, I have no further questions.

REDIRECT EXAMINATION

QUESTIONS BY MR. MCDONALD:

A. [sic] When you talked with Mr. Allen, did he indicate to you any of the women did experience, or were experiencing, difficulty in corresponding with you, writing letters? [88]

MR. KALE: Objection, Your Honor, I don't know what relevancy that has. It's also heresay.

MR. MCDONALD: We are going to have some later testimony which will tie all this in and talk about -- of course, you see, not everybody knows about lawyers,

knows about writing letters, the people who do want help, who are not able to communicate in the sophisticated way that we are.

MR. KALE: Your Honor, they have continuously wanted to go into what the other parties have been doing and what difficulty they were having. And when I asked a few questions they objected to that. I again object. If we are not going to broaden this thing, I don't see what the relevancy is.

MR. MCDONALD: I'm not trying to broaden it. I want to specifically ask about Marietta Williams.

MR. MCCUTCHEN: I think if you ask about Marietta Williams, I think that's all right. But I really don't think we need to explore the matters --

MR. MCDONALD: Yes, sir, my question was too broad. I was going to say inartful when counsel has to accuse himself of that.

Q. (By Mr. McDonald) Did he indicate to you that Mrs. Williams was having any difficulty in corresponding with you? A. His conversation was to the effect that he wasn't sure if he could get the ladies to write out themselves or to [89] communicate

their intent of bringing a lawsuit.

Q. Why did he say they were having difficulty or he was having difficulty?

MR. KALE: Objection again. He is going to be here to testify and I would rather him to testify.

MR. MCCUTCHEN: I'm inclined to agree. I think she can simply testify as to whether she got letters or didn't. I think Mr. Allen can testify as to what he knows about it.

MR. MCDONALD: All right. That's all that I have of this witness.

MR. KALE: Could I ask one more question, please?

RE CROSS EXAMINATION:

QUESTIONS BY MR. KALE:

Q. I might have asked you this on cross examination before but I would like to ask you again. Do you have Gary Allen's letter? A. No, I do not have any letter from him in my possession.

Q. Did you receive a letter from him or was it telephone calls? A. I think there was a letter and several telephone calls. I do not keep every piece of correspondence I receive.

Q. You don't have it? A. No.

EXAMINATION:

QUESTIONS BY MR. CRUM:

[90] Q. Miss Smith, what is your occupation? A. I'm an attorney.

Q. You practice law in Columbia?
A. Yes, I do.

Q. And I believe you stated that you were -- you first came in contact with the situation in Aiken through the South Carolina Council on Human Relations, is that correct? A. Yes, I was serving as legal consultant to the organization at the time.

Q. What is Mr. Allen's connection with the South Carolina Council on Human Relations? A. The previous attorney with the organization, or who had served as a consultant had represented him in legal matters. He might be a member.

Q. You don't know whether he pays his dues, or not? A. No, I don't.

Q. I believe you stated that you were not compensated in any way by the ACLU for your services to them? A. That is correct, yes.

Q. Who arranged this meeting in Aiken?
A. I called Mr. Allen in reference to

response from the South Carolina Council on Human Relations and they set up a meeting, got the ladies together and told me it would be at his place and a time was suggested that would be convenient for me, him and the ladies. And he gave me the directions [91] as to how to get there.

Q. So, you instigated the meeting?
A. In response to the request that the Council had received.

Q. Do you know -- I will rephrase this. Was Mr. Allen an acquaintance of all these women? A. I really don't know.

Q. Now, I believe you stated that Mr. Allen had told you that Mrs. Williams was interested in litigation against the doctor. Did he make that statement? A. Yes, when he called. And I'm not sure that it was in his letter that he made reference to the ladies and she was one --

Q. But he did specify Mrs. Williams?
A. Yes, he did.

Q. Now, with reference to this magazine article mentioned in your letter, I believe you testified that Mrs. Williams indicated that she didn't want to have anything to do with that. Did you arrange this magazine article? A. I did not, someone called.

Q. Who called you? A. It was from the National ACLU Office in New York.

Q. But the ACLU did instigate this magazine interview? A. Yes, that's how I heard about it.

Q. And you are a member of the ACLU presently. Is this a local chapter, or something? A. This is the South Carolina Chapter.

[92] Q. I believe you heard Mrs. Williams testify, and she indicated in her testimony, that she was not coerced by Dr. Pierce in having sterilization. Did you hear her testify? A. I believe that's what she testified to.

Q. I believe you testified to the fact that she said she told you that she was coerced. A. She did. I don't think she used the word coerced, that she was made or forced to sign.

Q. At what time and place did she make this statement to you? A. This was at Mr. Allen's Office in July.

Q. Was there anyone else present at that time? A. Yes, the other ladies, Mr. Allen and several of the people, were all in one room.

Q. Did they hear her make that statement? A. I do not know who heard her but

we were very close together so several people probably did hear the conversation.

Q. I believe you testified to the fact that she was advised of her legal rights, her constitutional rights, you used it one time. A. Yes.

Q. Exactly what do you mean by that, what did you tell her? A. This was in reference to her telling me that she was made to sign a statement because her baby wouldn't be delivered by the doctor unless she consented to the sterilization and that she was forced or made to sign it. I don't think [93] the word coerced was used by her. And I told her, in response to that, that if she did something against her will, being forced to do that, that that was wrong and that she had the right to know what she was doing and not be forced to do something like that.

Q. Now, did you have any contact at all with Mrs. Williams between the time of the first meeting in Mr. Allen's Office and the time of the telephone conversation after receiving the letter of August 30? A. No, I did not.

EXAMINATION:

QUESTIONS BY MR. MCKEOWN:

Q. Miss Smith, you apparently occupy several capacities with several different organizations. You, in 1973, you were associated with the South Carolina Council on Human Relations? A. Yes.

Q. And you occupied a legal capacity with that organization at that time? A. I served as legal consultant to them.

MR. CRUM: Is it Human Relations?

THE WITNESS: It's now the South Carolina Council For Human Rights. It was the South Carolina Council On Human Relations. It's the same thing.

MR. CRUM: Excuse me for interrupting here but I won't [sic] to get it straight in my mind. This is a private [94] organization, that's not the state? A. No, it's not, it's a private organization.

EXAMINATION:

QUESTIONS BY MR. MCKEOWN:

Q. Is that a non-profit organization? A. Yes, it is.

Q. What are its purposes? A. Its purpose is to protect individuals' right to equal opportunity in the democratic process through research and action programs.

Q. And you occupied a legal capacity with that group as a legal advisor? A.

Legal consultant, yes.

Q. Were you paid by that organization for your services? A. Yes, I was, I received a fee.

Q. A fee or a salary? A. A fee.

Q. On a matter to matter or case to case basis? A. It was a lump sum amount.

Q. A grant? A. Yes, ten thousand a year.

Q. And at the time you went to Aiken to meet with this group of people in July of 1973, did you go in your capacity as an attorney or legal advisor? A. No. Well, I guess I went in my capacity as a representative [95] of the Council at the time.

Q. And you went there for the purpose of rendering legal advice and looking toward the rendition of legal services, did you not? A. No, I went there as I was directed by the organization, to find out more information about their sterilization, which came from a request, I understood later, to get some assistance on the problem there and to really see if that was going on, and to talk to people who had been sterilized.

Q. Did you perceive [sic] your role, at that time, as a legal role? Did you

feel that you were making a legal investigation at that time? A. No, I did not because I had assisted the Council in other matters. It was not a view of being an attorney, for instance, because --

Q. But you did undertake, while you were at the meeting, to advise the ladies present of their legal rights, did you not? A. I told the ladies, in general, if they were coerced into doing this -- and I think I mentioned it specifically to Mrs. Williams and perhaps to the other ladies I talked to, that it was, in my opinion, wrong for them to be forced to do something. I discussed with Mr. Allen --

Q. You did undertake some explanation of what you perceived to be their legal rights to this group of people, did you not? [96] A. Not as far as bringing a lawsuit, to this group, I was discussing this with Mr. Allen in conversations as to what could the ladies do and could be done. He had told me that he was trying to get something done about the situation.

Q. Did you, at that time, feel that you were in any sense representing the ACLU, American Civil Liberties Union?

A. I told him that there was -- he had

asked about organizations or how could he get his [sic] done. And I did mention that I knew of the organization, the ACLU, an organization that could do this.

Q. Did you disclose to that group of people, at that time, that you were associated in any manner with the American Civil Liberties Union? A. I'm not sure if I told it individually or to the group that I was a member of the ACLU. I did tell Allen this and we were all in the room.

Q. At the time that you attended the July meeting, had the ACLU determined that it would support any type of legal action arising out of the sterilization procedure [sic] involving Dr. Pierce? A. That had not been brought to my attention.

Q. All right. Did you, at any time after that, make any report on what you had found, to the American Civil Liberties Union or the Council On Human Relations?

A. I did to the Council and I talked --

[97] COURT REPORTER: Excuse me just one minute.

MR. MCKEOWN: Okay

Q. (By Mr. McKeown) I asked her, I believe, did you make any report to either

the ACLU of the Council on Human Relations on your findings or your activities in the Aiken area, specifically with reference to the sterilization practices? A. I reported to the Council that I had gone and talked with the ladies. I discussed this with a member of the ACLU Board of Directors several days or weeks later when she called me in reference to the Board's decision.

Q. Did you make any recommendations to either of those organizations concerning the legal actions? A. No, I didn't.

Q. Did either of those organizations, at any time thereafter, determine to support a legal action with respect to the sterilization procedures [sic] in Aiken County? A. I was told by a Board member of the local ACLU that it had been discussed at a board meeting. This was a Sunday and they met that Saturday and I was not there, I had other commitments. And they had decided to persue [sic] the matter. That's how I found out about this organization getting involved. And I did talk to a lady in the National Office in reference to the ACLU getting involved.

Q. And was that conversation and that determination by the ACLU to support a

legal action made prior to August 30, 1973, [98] when you wrote this letter? A. Yes, it was.

Q. What is Carolina Community Law Firm? A. That was a public-interest law firm that was designed to persue [sic] various problems on behalf of the people who couldn't afford, with their income, like consumer issues.

Q. Was it supported by fees or by grants or just -- A. I think the concept behind the individuals who thought it up was to get support to do public interest work from foundations. There were two of us who had foundation grants. And requests were made to foundations when we realized that the response was negative, that we weren't going to get any total funding that we then changed the name, there is no longer Carolina Community Law Firm.

Q. What was the name changed to? A. To the members of the firm presently who are Buhl, Smith & Bagby.

Q. Were you operating on a grant at this time? A. Yes, at the time.

Q. What kind of grant were you operating on? A. The South Carolina Council

For Human Rights had received a grant from the Ford Foundation, and I was paid then [sic] thousand per year.

Q. Was that the only grant that you were operating on at that time? [99] A. Yes.

Q. Is or was Carolina Community Law Firm in any manner associated with the ACLU or any of its affiliate organizations? A. No, that's a separate organization, separate from the ACLU.

Q. Did it have occasion to handle litigation for the ACLU or any of its affiliated organizations? A. No, the firm did not handle any litigation for ACLU. There is one member -- there was one member who served as staff attorney.

Q. For the ACLU? A. Part time.

Q. And who was that? A. That's Herbert Bhul [sic].

Q. So he was serving as a staff attorney at this time, August 30, 1973, for the ACLU. A. I think so.

Q. And how was he compensated for that? A. I think the arrangement is that staff attorneys are paid from the ACLU Foundation in New York.

Q. Are they paid on a standard salary

basis or fee basis or just how are they compensated? A. I think his arrangement was a standard salary.

Q. All right. You were practicing in partnership with him at this time? A. Yes, we were together.

[100] Q. On August, 1973, the day that you wrote this letter to Mrs. Williams, had there been any determination made about proceeding with a lawsuit with reference to the sterilization matter? A. Not that I know of. I wasn't at the board meeting that the local ACLU had. And the board member communicated to me that they were interested in getting involved, and the other group also. There was this request that had been received, and I imagine that was discussed because they had a letter from Mrs. Waters.

Q. The meeting at which there was a determination that you would like to proceed with the lawsuit had been held and that determination made prior to August 30, 1973? A. Yes, that's correct. I was not in attendance.

Q. Had any decision been made about attorneys to handle that lawsuit? A. Not to my knowledge.

Q. What did you mean then when you said in your letter that the ACLU would like to file a lawsuit on your behalf for money against the doctor who performed the operation. And then later in the letter said, "Let me know if you are interested," or words to that effect.

A. Well, that was my way of putting what I understood the ACLU wanted to do, as well as Mr. Allen's conversations that the ladies were interested. And the ACLU could get clients.

[101] Q. Were you then seeking plaintiffs to maintain the action so that the action would not be maintained in the name of the ACLU? A. No, I wasn't, that was not my intent and I did not understand that at the time, or that I was seeking plaintiffs for the ACLU.

Q. Well, just what did you perceive to be the purpose of this letter then?

A. That the ACLU -- this is primarily from my conversations with the individuals involved, would like to, you know, if they were going to bring the suit from the request of one lady as a class action, and to get the other people there.

Q. But you were seeking members of

the plaintiff class, were you not? A. I guess, perhaps.

Q. And were you not soliciting their participation in the suit as a member of the plaintiffs' class? A. I didn't think I was soliciting their participation. I think perhaps the way I phrased it did not necessarily convey my purpose, but I also indicated -- because I knew that Mr. Allen called and said that the ladies were interested, that it was to communicate that the organization was interested, too, in bringing the lawsuit and if they wanted to be plaintiffs to communicate either with the [102] organization or Mr. Allen.

Q. But the purpose of the letter was to look for plaintiffs in the class action, was it not? A. The purpose of my letter was to let them know that there was an organization who could offer them legal assistance based on Mr. Allen's request to me and also the ACLU's interest.

Q. But you still had to have some plaintiffs to maintain the action who fitted the member of the class -- who fitted the class? A. There was already a letter that had been received, Mrs. Waters, that might have been mentioned in the letter. And I understand that there

was another request that came in.

Q. You received no such request from Mrs. Williams? A. That is correct. In fact, she called indicating the desire not to proceed.

Q. And before you wrote this letter, you received no request from Mrs. Williams to participate as a plaintiff in the class action? A. That's correct.

Q. And did you not say that it would be a fair characterization in this letter to say that it was an effort on your part to determine whether she would become involved as a plaintiff in this class action? A. I think my letter to her indicates that there was an [103] organization who was willing to assist her if she was interested, based on -- I don't know if it was a class action -- I didn't know they were going to -- this was after the letter I found out it was going to be a class action because we had one person already and another had come in. So, this letter was an indication of my communicating to her that there was an organization.

Q. That would bring a suit in some manner on her behalf? A. If she was interested, yes. That was a way of

informing her.

Q. All right, Ma'am. Is it not the practice of the ACLU to ask for award of attorney's fees in these suits? A. I have recently been informed that they have been asking, I really do not know that much about it.

Q. Do you know what disposition is made of attorneys' fees in those cases in which the ACLU participates and in which the court, in fact, does award them? A. I have been informed that that money goes to the ACLU Foundation in New York.

Q. Is that the same funds that are used to pay counsel in cases either as staff attorneys or their other participation in these cases? A. I'm not sure. There is an organization in New York and I have really never had the inner workings of the organization.

[104] Q. When the ACLU undertakes to sponsor litigation there would be certain costs attendant upon the litigation, would there not? A. Yes, that's correct.

Q. Where do those costs come from? A. The organization -- I'm not sure where it -- how it's distributed because I have never handled a case a such, I really don't have pertinent knowledge, but I was

informed that the ACLU pays the costs for cooperating attorneys.

Q. And you wrote this letter of August 30, 1973, as an attorney associated with the Carolina Community Law Firm which was a community interest law firm? A. I wrote it on our stationary [sic]. I didn't think -- that's the way I sign all -- it was a typical letter that I would write and that's the way I sign all the letters I write.

Q. You did write it as an attorney at law, you didn't write it as someone being affiliated with, for instance, the Council on Human Relations or some other organization? A. Well, I consider myself as an attorney. So, a lot of times I am an attorney on the board of the ACLU. I am an attorney who works for the Council. I did not differentiate between an individual being a member of the ACLU or an individual being an attorney or an individual attorney being a member, that was just the way I signed the letter. It was written on behalf of the American Civil Liberties [105] Union.

MR. MCKEOWN: I believe that's all.

EXAMINATION:

QUESTIONS BY MR. MCCUTCHEN:

Q. Miss Smith, do you remember exactly when you went to Aiken in July of '73? A. No, I do not recall the date. I do know it was in the last half of July, probably the late 19's or 20's in July, I don't recall the date.

Q. Is my recollection correct that sometimes during the course of that meeting, you indicated to them that you were an attorney? A. I introduced myself and I told Mr. Allen this because I had never met him before and we were all in the same room. I'm sure the group heard that I was an attorney or he might have told them, I don't really recall, but I did introduce myself and told them where I was from. And I might have told them that I was an attorney.

Q. And in that same conference or discussion am I not correct that somewhere during that, that in your investigation you also explained to them the matter of litigation? A. I did not explain to the ladies, only Mr. Allen and I talked about legal matters, and he asked me, you know, what could be done. He was interested in having something done about the case and he said

that's why the request was made, [106] trying to get people. I talked to Mr. Allen. Now, there were other people there who probably overheard the conversations because the room was rather small.

Q. Well, is it your testimony that you did not indicate to the group that there were certain types of litigation that were available to them? A. I told the group -- it's my testimony that I did not tell them that, you know, they could bring a lawsuit or they could go to court, whatever. I did tell the group generally-- and I know Mrs. Williams in particular, that if what was done to them was against their wishes that I didn't think that was right and they had the right to know what was being done to them. Now, I did discuss this with Mr. Allen and the group probably overheard.

Q. What you are saying then is that somewhere during the discussions the ladies that were there were given information or heard some parts of the information that litigation was available if they were agrieved[sic]? A. I don't know if they heard, it was in response to a conversation Allen and I had in reference to what could be done, you know, about the situation

because of what happened to the ladies. And that's when I explained to him, you know, what, in my opinion, I thought could be done. And that's when the idea of legal representation could be sought or litigation could be sought. But that was explained [107] to Mr. Allen. I do not know who was present at the time, you know, people were coming and going and I don't know who was in the room at the time, but this was not told to the group that they could, you know, persue [sic] litigation, that I was recommending them to persue [sic] litigation.

Q. I believe you indicated that following the meeting up until the 30th of August that you had no other communication with Mrs. Williams? A. That's correct.

Q. In any case or form? A. Not directly, right.

Q. When were you admitted to the South Carolina Bar? A. In September, 1972.

Q. You were a member of the South Carolina Bar in 1973? A. That's correct.

Q. And you have been a member since your admission? A. Yes.

Q. Do you practice in the State Court? A. I have had a few cases in the State Court and some in the Federal Court.

Q. You practice in both of the courts, the United States District Court and the State Court? A. That's correct.

Q. I assume this was true in 1973? A. I was not a member of the District Court until either [108] November or October '73. I was a member of the State Supreme Court at that time.

MR. MCCUTCHEN: I think that's all.

EXAMINATION:

QUESTIONS BY MR CRUM:

Q. With reference to this law firm here, did you specify as to how -- where the funds came from by which you operated this firm? A. When the group was formed requests or proposals were into foundations for funding -- and there were two persons who had foundation money at that time. And when we realized we weren't going to get funded fully, we changed the name.

Q. Well, to continue your funding you would have had to have produced results, wouldn't you? A. There were several cases pending, I think, primarily in Federal Court.

Q. In other words, you would have had to have had litigation, really, to make this firm successful? A. What?

Q. To keep your funding up, to get funds to operate the firm, you would have had continued to represent somebody, have litigation going, wouldn't you? A. We did have two persons who were getting money or getting foundation support. And, I guess, we were hopefully looking for other money to come in.

[109] Q. But you couldn't have gotten it unless you had clients to represent? A. Pardon.

Q. You couldn't have gotten funded unless you had clients to represent? A. Yes. Well, there were cases pending before the group got together on various issues involving welfare issues, prison, consumer issues, as such. And I think those were the basis of the requests to the foundation because of those kind of cases we were presently doing.

REDIRECT EXAMINATION

QUESTIONS BY MR. MCDONALD:

Q. What sort of functional arrangements do the people in the law firm presently have? A. Each person receives his or her own fees and we share expenses.

Q. It's just an expense-sharing arrangement? A. We share office expenses

and we pay the expenses. Each person gets his or her own income. There is no division of income.

Q. I believe, in response to one of the questions put to you by a member of the Panel, you talked about someone who wished to do a magazine article about the sterilization, is that the Biz [sic Ms.] Magazine? A. Yes.

[110] MR. KALE: Objection, he is leading the witness.

MR. MCDONALD: Well, I'm asking her whether or not MRS [sic Ms.] Magazine -- do you know whether or not MRS [sic Ms.] Magazine contacted the national ACLU and sought to have an interview with the women in Aiken? A. That was my understanding.

Q. And that is what is involved in the incident you testified in response to a question from one of the Panel members? A. That's right.

MR. KALE: I would like to ask a couple of questions, if I may, also.

RE-CROSS EXAMINATION

QUESTIONS BY MR. KALE:

Q. Who were the members of the Carolina Community Law Firm at the time in 1973? A. What time in 1973?

Q. Say August 30? A. August 30, Herbert Buhl, I think, Carlton Bagby and I were the three.

Q. Is Carlton Bagby an attorney in the case of Doe v. Pierce? A. I don't know, I will have to see the Complaint to see if he is listed there.

Q. Were there any other ACLU attorneys [sic] present in Aiken on July, 1973, when you had your discussion with Mr. Allen in his trailer? [111] A. No, there wasn't.

Q. You were the only person there who had any affiliation with the ACLU? A. I was the only person there whom I knew to be a member of the ACLU.

Q. I believe it was your testimony that subsequent to that time there was a decision made that the ACLU would sponsor class action in this case? A. There was a decision made by the board -- communicated to me by one of the board members of the ACLU that they were interested in getting involved. I do not know exactly what date that was but the ACLU had received a request that was discussed at their board meeting.

Q. You were a member of the board at that time? A. Yes.

Q. Were you vice president, at that time? A. Yes, I was.

Q. Did you talk to members of the board prior to their meeting? A. I do not recall if I did. I may have had conversation with various members, either members of the board -- the board meetings are open to other members. I don't recall if I discussed it with specific board members.

Q. Were they [sic] conversations in reference to what you had found out or what had occurred down in Aiken in July? A. In fact, I talked to a board member after they called me. [112] I had talked to the Counsel [sic], I had made a report to them.

Q. You made a report to the Counsel [sic] of the ACLU? A. No. There are two separate organizations.

Q. Okay. A. I did not make a report to the ACLU. When the request -- Mr. Allen asked about representation I told him the office of the ACLU was an organization that could render legal services to the individual. And the letter was sent in. And this matter was discussed at a board meeting. And the decision of the Board was communicated to me by a member.

Q. Do you know if the Board had access to your report that you had made to the

Counsel [sic]? A. I don't think it did.

MR. KALE: I have no further questions.

MR. MCDONALD: Our character witnesses will be extremely brief.

GERALD M. FINKEL, a witness on behalf of the Respondent, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

QUESTIONS BY MC. MCLAIN [sic]:

Q. Mr. Finkel, what's your occupation? A. I'm an attorney at law.

Q. And what states are you admitted to practice? A. In South Carolina and the District of Columbia.

Q. Are you a member of any Federal Bars besides the District [113] of Columbia? A. Yes, the U.S. Supreme Court.

Q. And the District Court here? A. The District Court here and the Fourth Circuit Court of Appeals.

Q. How long have you been practicing law? A. Four and a half years.

Q. Where have you had your practice? A. In Columbia, South Carolina.

Q. For the past four and a half years? A. That's correct, sir.

Q. In the course of your practice

have you come to know Edna Smith? A. I do.

Q. And how long have you known her?

A. I've known her since she entered law school and I think that was about 1969, about.

Q. Have you had occasion to become familiar with her reputation in the Bar --
A. I have.

Q. -- in this community? What is that reputation? A. It's outstanding.

Q. Are you familiar with her reputation for truth and veracity in this community? A. Yes, I am.

[114] Q. What is that reputation?
A. It is also outstanding.

Q. Do you know her reputation among members of the Bar in this community for ethical practices? A. Yes, I do.

Q. What is that reputation? A. I think she adheres to the highest ethical practices the profession could expect.

Q. And do you personally have any knowledge where she could have made an attempt to solicit or stir business to herself and did not do so? A. Yes, I do.

Q. Could you just relate those briefly to the Panel?

MR. KALE: I don't know what the relevance of this is, we are getting far afield

from character.

MR. MCCUTCHEN: I think so. I think the witness can state generally about her reputation but I think the details are probably not proper.

MR. MCLAIN [sic]: Can I make just a brief offer?

MR. MCCUTCHEN: Yes, sure.

MR. MCLAIN [sic]: We would prove through this witness that in a piece of litigation in which he represented some twenty members of the faculty at Allen University in dispute with the university he knew Miss Smith, who was also a faculty member at Allen University, had an opportunity [115] to undertake the litigation and had an opportunity to stir it in her direction but refrained from doing so and, in fact, assisted him in some respects in that litigation without any compensation to herself.

MR. KALE: Your Honor, I still don't see what the relevance in this particular proceeding would be.

MR. MCCUTCHEN: Well, I think we have already indicated that the details are not relevant. It was solely his offer of proof in the record, but we haven't accepted it

as a part of the record.

MR. MCLAIN [sic]: That's all, thank you, Mr. Finkel.

CROSS EXAMINATION:

QUESTIONS BY MR. KALE:

Q. Mr. Finkel, are you a member of the ACLU? A. No, I'm not a member. I acted as a cooperating attorney on occasion.

Q. Were you involved in Doe v. Pierce? A. No, I was not.

Q. Did you consult and talk with Miss Edna Smith about the case of Doe v. Pierce? A. No, sir, I did not.

MR. KALE: I have no further questions.

MR. JASPER M. CURETON, a witness of lawful age, having been duly sworn, testified on behalf of the Respondent.

DIRECT EXAMINATION:

[116]

QUESTIONS BY MR. MCLAIN [sic]:

Q. Would you state your name, please, sir? A. I'm Jasper Cureton.

Q. And what is your occupation, Mr. Cureton? A. I'm an attorney.

Q. And what states are you licensed to practice? A. South Carolina.

Q. Are you admitted to any federal court bars? A. Yes, sir, I'm admitted to

the District Court and the Court of Appeals.

Q. Fourth Circuit? A. Yes.

Q. How long have you been admitted to practice in South Carolina? A. I was admitted in 1967.

Q. And have you been practicing in South Carolina since that time? A. Yes, sir.

Q. Where in South Carolina? A. Columbia.

Q. Throughout the entire period? A. Yes, sir.

Q. And in that time have you come to know Miss Edna Smith? A. I have.

Q. Approximately how long have you known her? A. As I recall that I first met Miss Smith in 1965, when I was [117] in law school at USC and she was in undergrad school there.

Q. So you have known her throughout her years as a law student and in practice? A. Yes.

Q. In the Columbia area have you come to know her reputation at the Bar? A. I have.

Q. Can you tell us what that reputation is? A. That reputation is excellent.

Q. Do you know what her reputation is in Columbia for truth and veracity?

A. Yes.

Q. In the Community here in Columbia?

A. Yes, I do.

Q. And what is that? A. That is also excellent.

Q. Do you know her reputation for ethical practices at the Bar? A. I do.

Q. What is that reputation? A. That is very good.

MR. MCLAIN [sic]: Thank you, very much. Answer any questions the other counsel has.

CROSS EXAMINATION:

QUESTIONS BY MR. KALE:

Q. Mr. Cureton, do you practice here in Columbia? [118] A. Yes, I do.

MR. KALE: I have no further questions.

MR. MCCUTCHEN: Let's try to get back at 2:30, that's about an hour.

(recess)

MR. MCCUTCHEN: All right, sir.

MR. MCLAIN [sic]: Mr. Chairman, while we are waiting for Mr. McDonald to come back with Mr. Pollitt, I wonder -- I think the Attorney is willing to enter a stipulation with us; that the character testimony of Mr. I.S. Levy Johnson, who is a member

of the Richland County Bar and has been for a period of some years, and also a member of the House of Representatives from Richland County, who, if he was called to testify, would in response to the questions that were asked Mr. Cureton, give the same answers Mr. Cureton did to those questions. Is it so stipulated?

MR. KALE: Yes, it is.

MR. MCCUTCHEN: Let the record so show that it is stipulated by Counsel that Mr. Levy's testimony in so far as character is concerned would be the same as the prior two character witnesses.

DANIEL H. POLLITT, a witness on behalf of the Respondent, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

QUESTIONS BY MR. MCLAIN [sic]:

[119] Q. Mr. Pollitt, would you state your full name for the Panel? A. Daniel H. Pollitt, P-O-L-L-I-T-T.

Q. What's your present employment, Mr. Pollitt? A. I'm professor of law at the University of North Carolina School of Law.

Q. And are you also admitted to the Bar? A. Admitted to the New York Bar, the

District of Columbia Bar, the Supreme Court of the United States Bar, the D.C. Court of Appeals Bar and the Fourth Circuit.

Q. And when were you first admitted to the practice of law? A. 1949.

Q. And have you been either in practice or academic positions related to law since that time? A. Yes.

Q. Now, how long have you been in your present position? A. For 18 years, since 1957, at the University of North Carolina.

Q. And what fields of law do you specialize in? A. For the last ten years, or so, I taught the courses in constitutional law and in labor law. And I teach seminars[sic] in the current Supreme Court decisions and in the administration of criminal justice.

Q. And have you had any other academic employment in law school? A. Prior to going to the University of North Carolina I taught at the University of Arkansas for two years. And prior to that time, prior to 1955, I was practicing law in Washington, [120] D.C. and I taught parttime at night at American University in the District of Columbia.

Q. Have you been a visiting professor at any time? A. Yes, I have visited at the University of Oregon. And on one occasion, for a year, and I have visited at Duke University on three or four occasions.

Q. Have you written any articles in professional publications? A. Yes, I have written approximately 45 to 50 articles generally on matters of topical interest in the areas of civil rights and civil liberties.

Q. Have any of these articles related to the problem of obtaining representation for unpopular causes? A. Yes, two of them did. One was in 1964. One was published in Harpers Magazine and the other one was published in the University of North Carolina law review.

Q. Do you have any personal experience with the representation of unpopular clients or causes in the civil liberties area? A. I've had a great deal of experience.

Q. Could you just recount that for the Panel, please? A. Yes. I graduated from law school in 1949, and I spent a year as a law clerk for Judge Henry W. Edgerton of the United States Court of Appeals for the District of Columbia. And then I went into law practice with the

law firm headed by Joseph L. Raugh, R-A-U-G-H. And Mr. Raugh, at that time, was the Chairman of the Americans for Democratic Action and [121] he was also the counsel to the United Auto Workers.

MR. MCCUTCHEN: Counsel, is there any question about the gentleman's qualifications? I assume --

MR. KALE: No question about qualifications, I do have a question about the purpose of this testimony.

MR. MCCUTCHEN: Well, I'm not at all sure of the extent to which it's going. But I take it these questions were directed primarily to the matter of qualification.

MR. MCLAIN [sic]: If the Attorney General would stipulate that Mr. Pollitt is qualified as an expert in the area of civil liberties practice and in problems of obtaining representation for unpopular causes we don't need to put his qualifications in that regard in the record.

MR. MCCUTCHEN: I realize you have some question as to the extent to which this goes, but insofar as his qualifications are concerned is there any question?

MR. KALE: I don't have any qualifications as to his expertness in constitutional and civil rights. I don't know how

he can be an expert in unpopular causes but I would so stipulate.

MR. MCCUTCHEN: Very well.

THE WITNESS: I would be glad to explain briefly how you can become an expert in getting lawyers for unpopular causes as that's been a great concern of mine for twenty years.

[122] Q. (By Mr. Mclain [sic]) Could you recount -- are you presently associated in any way with the ACLU? A. I am a member of the North Carolina Civil Liberties Union. I am the past President of the North Carolina Civil Liberties Union. I was one of the charter members of the North Carolina Civil Liberties Union.

Q. And have you had occasion to assist the North Carolina Civil Liberties Union with obtaining representation for persons? A. On many, many, many, many, many occasions, most recently being yesterday morning.

Q. Could you -- does this experience include situations in which persons have made inquiries on behalf of other persons for assistance from the American Civil Liberties Union? A. Many occasions.

Q. Could you recount some illustrative examples to the Board? A. Yesterday morning --

MR. KALE: I don't know what the relevance of this is.

MR. MCCUTCHEN: Well, I'm inclined to agree with counsel. I think he has indicated the basis upon which he proposes to offer his testimony as an expert. And apparantly [sic] the record indicates that there is a stipulation as to his activities and qualifications in this area. And I don't believe that the particulars of the instances, or example, is [123] relevant, and I sustain the objection.

MR. MCLAIN [sic]: All right, thank you, Mr. Chairman. We would simply offer to prove through this witness that he has on many occasions received inquiries from disinterested parties to the American Civil Liberties Union requesting that the Civil Liberties Union offer assistance to other persons who have not actually contacted the Civil Liberties Union or may not have contacted anyone at all. And in response to that he either himself, or through other attorneys, offered the services of the American Civil Liberties Union to the aggrieved [sic] parties in those situations. As in circumstances that occurs [sic] quite frequently in the process of providing counsel to persons who

are not equipped by reason of education or for other disabilities to make the request on their own for this assistance.

MR. KALE: I might ask what purpose the offer of proof is made? If it tends to try to admit this into evidence or for what purpose?

MR. MCLAIN [sic]: We would offer that as testimony of this witness. I assume that the Panel has already ruled that that's not relevant but for the record we would admit that in evidence.

Q. (By Mr. McLain [sic]): Now, in your experience is it an easy matter to obtain counsel to represent persons in unpopular causes? [124] A. Very difficult.

Q. And in what localities have you found that to be the case? A. North Carolina and most of our localities outside of the major cities. I also found that to be true when I was in Oregon where there was a controversial matter about church and state. I found that to be very true in Washington, D.C. during the early 1950's, during the McCarthy period when there was a lot of litigation under the loyalty security program.

Q. Are you familiar in your experience with disciplinary actions which have

been initiated against attorneys who have represented unpopular clients? A. One personal experience, the rest of it is through scholarly research.

Q. What is the effect, in your opinion, of such disciplinary action against attorneys representing unpopular causes?

MR. KALE: I'm going to object at this point. I don't think this is an area in which the witnesses can testify. I think the question of solicitation is a matter for this panel to decide. And it appears that his testimony is offered for his expert opinion as to what the status of the law is on solicitation. And I don't think that's relevant, I think that's usurping the duties and functions of this Panel.

MR. MCLAIN [sic]: With all respect, Mr. Chairman, we are [125] simply attempting to elicit, at this point, the witness' opinion as to the effect which disciplinary proceedings against attorneys who undertake to assist in providing representation for unpopular clients, will have on unpopular clients obtaining such representation in the future. And I think that's an evidentiary fact which can and should

be in this record.

MR. KALE: I don't see the relevancy of it.

MR. MCCUTCHEN: Well, I think the Panel is inclined to agree. Of course, insofar as the decisions are concerned the Panel may not be as capable, perhaps, as my friend to interpret them but they are matters of public record. I think we can determine the decisions that are made. I don't think the Panel feels that this is an area that is really embraced within this particular proceeding.

MR. MCLAIN [sic]: Mr. Chairman, if I can try to focus on the particular question that I was asking the witness at this point; and that particular question is, as a matter of evidentiary fact, not as a matter of legal conclusion, but as a matter of evidentiary fact from his experience of what is the effect of disciplinary proceedings against attorneys who have tried to assist in providing representation for unpopular clients.

MR. MCCUTCHEN: Well, I don't think that has any bearing on the issue that we are trying, the effect that it [126] may have, the inquiry [sic] as the Panel

apprehends it is the narrow question of whether or not the Respondent, in this instance, was guilty of the charge that was made, and that's solicitation. Now, what effect disciplinary proceedings have I don't think is germane to the issue.

MR. MCLAIN [sic]: Well, we would offer then, again, Mr. Chairman, for the record, with your permission. We would simply state that we would offer to prove through the witness that the instigation and particularly the administration of discipline, but even without the administration, simply the instigation of disciplinary proceedings against attorneys who have been associated with assisting in providing legal counsel for persons who have causes and legal problems which are unpopular in the community has the effect of making it even more difficult than it is at the present time, and has always been, to obtain counsel for similarly situated clients and persons in the community in the future. And we simply would tender that as an offer that we would prove through this witness.

MR. MCCUTCHEN: Well, the record will show that you have tendered the proof, and I think it will show the basis for which

you have tendered it. The Panel is still of the opinion that this is not a matter that is germane to the issue that we are called upon to decide.

Q. (By Mr. Mclain [sic]) Mr. Pollitt, with respect to the administration [127] of justice and the protection of rights in the community, what is the effect of limiting the access of persons in the community, particularly those of limited means and ability, to legal regress [sic]? What is the effect on the administration of justice?

MR. KALE: I'm not sure if that's not the same question rephrased a different way. It's still going into the effect, so-called effect of disciplinary proceedings on unpopular causes.

MR. MCCUTCHEN: Counsel, what really is the purpose of this line of questioning insofar as this particular proceeding is concerned?

MR. MCLAIN [sic]: Mr. Chairman, the purpose which we have is to establish, as a matter of evidentiary fact, in this record the result -- the predictable result of the administration of discipline particularly if there is any -- if the case is even close, if there is any question that the case is close. And we feel that the

evidentiary fact that such discipline will deter the availability of legal services and the availability [sic] of legal information to the general public, particularly those parts of the public who are underprivileged with respect to knowledge, information and financial means, that that is a consideration which should be relevant to determine whether any discipline ought to be administered. And, in fact, in determining whether or [128] not the conduct which was alleged to be in violation of the Canons was protected or not. In both instances we suggest it's relevant.

MR. MCCUTCHEN: To be perfectly frank, counsel, Panel is of the opinion that within the narrow limit of our inquiry [sic] that that would not be germane to the purpose for which we are sitting. And we really don't see that this would determine the outcome of this particular proceeding at all.

MR. MCLAIN [sic]: All right.

MR. MCCUTCHEN: We are concerned with this question as to whether she is guilty of this particular charge that's made. And it seems to me that this is beyond the scope of our inquiry [sic].

MR. MCLAIN [sic]: Let me offer then, Mr. Chairman, just one final offer of proof from this witness with respect to that particular line of questioning. And that offer is that this witness would testify that it is on occasion necessary for attorneys to make available, to take initiative [sic] and make available to aggrieved [sic] persons both information as to their legal rights and as to availability of legal counsel from organizations such as the American Civil Liberties Union to assure that the rights of inarticulate economic disadvantaged persons are vindicated. And that, in fact, because such initiatives are not taken on more occasions there [129] are a whole host of legal rights, constitutional and other civil rights, which are not vindicated because attorneys do not -- and other persons, do not, in fact, take initiative [sic] to apprise the public both of the fact of a legal wrong having been committed and of the availability of counsel to assist in the redress of that wrong. If the Panel's ruling as to that material is the same I will simply offer that as an offer of proof and move on to another area.

MR. MCCUTCHEN: This is the feeling of the Panel, and we understand the purpose for which you have offered it and the offer of proof is in the record so that you are protected on that. The Panel feels that it's beyond the scope of this particular inquiry [sic].

MR. MCLAIN [sic]: All right, Mr. Chairman, not to provoke a further objection from my opposing counsel, is it also the Panel's opinion -- I believe you just expressed a moment ago -- that the Panel would not receive testimony from this witness as to his conclusions from a hypothetical question stating the facts as developed in this particular proceeding as to whether or not that constituted improper conduct or, in any sense unethical conduct under the disciplinary rules.

MR. KALE: May it please the Panel, if I may be heard on this. I think this situation would be similar to a prosecutor being able to put up his expert on criminal law [130] and testify to the judge and jury as to whether this man committed murder or not. I think, in so doing, you would have usurped the function of the jury. And I think that's what we are here today, and what this Panel -- the question the Panel

has here today is this solicitation under the law of the State of South Carolina. And I just don't believe that this is something that you can testify to. I think this is the Panel's and only the Panel's decision.

(discussion off the record)

MR. MCCUTCHEN: The Panel is of the opinion that that's a matter that is within the province of the Panel, that's what we are here to determine. And I don't believe the expression of opinion of the witness would be proper.

MR. MCLAIN [sic]: All right. If the Panel would simply note our position is that our understanding of the law is that the point of qualifying the person as an expert is to allow that person to make a judgment for the finder of facts as to ultimate questions; therefore, that the objection of the Attorney General is not well taken.

MR. KALE: You Honor, may it please the Panel, I would point out that the Respondents have filed a brief stating their position in this matter.

MR. MCCUTCHEN: Yes, sir.

MR. KALE: So they have before the

Panel their feelings of what the state of the law is in this brief. [131]

MR. MCCUTCHEN: Well, I think these are matters, particularly decisions in this area are numerous and I think we can read them. I think this is a matter of interpretation and I think we are in an area now that I don't think justifies testimony with reference to the matter of an opinion of an expert within this particular area. You may tender your proof for the purpose of protecting your record.

MR. MCLAIN [sic]: All right. If permitted to do so I would ask Professor Pollitt if, under the following circumstances, and the attorney involved in the following set of circumstances was guilty of impropriety. The first set of circumstances is; that an economically disinterested party requests an organization to investigate an alleged violation of personal rights of other persons known to the disinterested party, that an attorney at the request of the organization which had been contacted then contacted the disinterested party and meets with both the disinterested party and the agrieved [sic] persons to investigate the matter, and the

attorney, at that time, informs the agrieved [sic] persons of what their legal rights are and the fact that in the attorney's opinion there would be certain means to obtain legal redress for those rights, but the attorney makes no offer of legal assistance [sic]; the attorney subsequently receives a request from one of the agrieved [sic] parties to help [132] secure representation, and is also told by the disinterested party that the other agrieved [sic] parties wished to secure representation but had not requested it because they are inexperienced in correspondence; the attorney is then told by representatives of the state and federal American Civil Liberties Union that that organization is willing and able to provide representation for persons in a situation of the agrieved [sic] parties; and the attorney finally writes to one of the agrieved [sic] parties who has not directly requested assistance [sic], a letter of the substance of the letter that's before this Panel, that the American Civil Liberties Union pay no counsel fees for such undertaking such litigation nor receives any contingent compensation or any other compensation from agrieved [sic] parties

for undertaking such litigation unless such compensation might be awarded by the court; and that the witness' response to that question would be that the attorney is not guilty of any impropriety or any improper conduct.

Then I would ask the same question changing only the assumption that at the initial meeting of the agrieved [sic] parties the attorney, in fact, made an offer of personal legal assistance [sic] but not for any compensation or fee. And the witness' response to that hypothetical would likewise be that the attorney is not guilty of impropriety or any improper conduct. [133]

MR. KALE: If it please the Panel, based upon his offer of proof I would like to make or enter into the record a further objection of the relevancy since it does not conform to the facts as we feel they have been presented at the hearing.

MR. MCLAIN [sic]: It's my understanding, Mr. Chairman, is that an objection of any sort to be well taken must specify the omissions so that we can include them in the hypothetical. We would be glad to include any specified omissions

at this time if the Attorney General would like, if you so desire.

MR. KALE: We feel like there was no proof that there was any inability upon these parties to correspond with American Civil Liberties or anyone else that they desired to contact. We do not feel like there has been any testimony which substantiates these alleged contacts since there was no admission into evidence of certain letters which they say were written, which we objected to because they weren't presented. That would be sufficient.

MR. MCLAIN [sic]: Mr. Chairman, we would simply state that if the witness were asked the hypothetical question with those additional assumptions that his answers would be the same.

MR. MCCUTCHEN: Yes, I understand that.

MR. MCLAIN [sic]: Just one further area, Professor [134] Pollitt. Are you familiar with the practice of the American Civil Liberties Union on occasion requesting an award of attorneys' fees as part of the relief requested in litigation which it brings?

THE WITNESS: Yes, I am.

Q. (By Mr. McLain [sic]): Do you know the purpose of that policy? A. Yes, I do.

Q. Would you state that for the Panel?

A. There are two primary purposes; first, it's a deterrent against continuing violation of the constitution. The award of attorneys' fees is a deterrent. The second prime purpose is to encourage other attorneys to undertake these cases since there will be the promise of financial reward.

Q. Now, have there been -- are there areas of the law where the provision for court-awarded attorneys' fees has had the effect of stimulating other counsel to enter? A. Yes, there has been.

Q. Could you give some examples? A. Yes. One is Title 7 of the Civil Rights Act which has to do with employment discrimination. At one time the North Carolina Civil Liberties Union had a number of such cases. Now, we no longer have any cases because attorneys' fees are awarded automatically. The other area is housing discrimination. We had a lot of housing discrimination initially. Now, that the attorneys can generally get [135] attorneys' fees we have no trouble finding attorneys to take them all apart from the North Carolina Civil Liberties Union.

MR. MCLAIN [sic]: Just a minute, Mr. Chairman. I have no further questions, Mr.

Chairman. Answer any other questions Mr. Kale has.

CROSS EXAMINATION:

QUESTIONS BY MR. KALE:

Q. Mr. Pollitt, did I understand you to say that the awarding of attorneys' fees has induced persons to represent actions for the ACLU because of the promise of financial gain? A. No. It relieves us of the obligation to take these people because they can now get private attorneys.

MR. KALE: I have no further questions.

MR. MCCUTCHEN: The Panel has no questions.

(Thereupon the witness was excused)

CHARLES LAMBERT, a witness on behalf of the Respondent, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

QUESTIONS BY MR. MCDONALD:

Q. What is your name? A. Charles Lambert?

Q. And where do you reside, Mr. Lambert? A. Thomasville, North Carolina.

Q. And what's your occupation there? [136] A. I'm a lawyer.

Q. How long have you been so employed in North Carolina? A. Since 1953.

Q. Where did you go to law school?

A. The University of North Carolina.

Q. Do you have any association, or have you had any association, with the American Civil Liberties Union? A. Yes, sir, I have. I was the first President of the North Carolina Civil Liberties Union which was organized in 1965. I was the President for approximately three years. During that period of time I was also a member of the National Board of Directors of the American Civil Liberties Union. And, at the present time, I am a member of the North Carolina Civil Liberties Union as a member of the board of directors.

Q. What are your duties as a director of both the national board and the North Carolina ACLU Board? A. Well, first the North Carolina Civil Liberties Union we have a board meeting every two months. And at this meeting we -- first of all we are elected by the general membership just like a corporation, shareholders except it's one man one vote there, and we elect the officers, the directors do. The directors also appoint a staff counsel. We have one staff counsel, we have one executive director and one secretary. There are only

three paid employees in the [137] North Carolina Civil Liberties Union. The directors consider various cases that might be accepted by the North Carolina Civil Liberties Union as cases; that is, whether or not there is substantial civil liberties question involved in a particular case. We have many requests for assistance [sic] both from -- well, we get them from everywhere, by telephone, by mail or personal contacts. And when these are considered to be of sufficient movement we bring them before the Board of Directors and the Board, in open debate, decides whether to accept the case. Also at the Board of Directors meetings we discuss housekeeping duties such as fund raising and also things like, well, everything that pertains to the operation of the business just like any other organization might. Well, we have an education program, a legislative program. We actually have a committee to study legislation from the North Carolina Legislature. We make suggestions, we have a lobbyist. He is asked to testify before the committees in the North Carolina Legislature. And occasionally if we have anyone who has a specialty or a field of

expertise he is asked to appear before the North Carolina Legislature -- committee, right. Excuse me.

Q. I was just going to ask you about your duties as a national board member.

A. Well, the national board, at the time I was a member, met five times a year. It met for two days, [S]aturday and [S]unday, [138] and it met in New York City at some hotel. They had rented a room large enough to accommodate the board of directors. These directors came in from the various states. Nearly every state in the union has an affilliate [sic] now. And these affilliates [sic], state affiliates often have chapers [sic] in various cities in the state. That's true in North Carolina, I believe we probably have six or seven chapters in the various cities. But the affilliate [sic] is entitled to a representative on the national board, at least one. And there also are elected to the national board membership candidates at large who are not members of an affilliate [sic] but who is just nominated. And these people are elected by the membership at large. The board meets and it considers policies of the board. The board rarely takes up a

case by case consideration because there are so many cases involved. They do establish policies at those meetings. The meetings are open --

MR. MCCUTCHEN: Mr. McDonald, what is the relevancy now? He has gone pretty well into the operations of these various organizations. What's the relevancy of this particular testimony to the issue that we have got? We are really not trying the organizations of which he is a member, or we have no questions about the propriety of their operations or methods. What's the relevancy that that has to our particular inquirey [sic]? [139]

MR. MCDONALD: I just wanted to establish, one, that he is qualified to speak about the operations of the ACLU. And then I want to ask him about the policies with regard to reimbursing attorneys, whether or not they receive fees, and so forth.

MR. MCCUTCHEN: Well, I think he has pretty well related what he has done. And I don't see that it would serve any purpose, really, to continue --

MR. MCDONALD: All right, sir.

MR. MCCUTCHEN: -- these various types of activities.

Q. (By Mr. McDonald) All right, sir, let me ask you then -- I assume there is no question about his ability to speak as an expert then about the practice of the ACLU, I would assume, from the Chairman's determination of the qualifying -- Mr. Lambert, what is the policy of the --

MR. MCCUTCHEN: Well, I don't know that the Panel has expressed any opinion about his qualifications. We are simply having some difficulty in relating these various activities to the issue that we are to determine.

MR. MCDONALD: Well, I was going to ask him what the policies of the ACLU are about attorneys' fees and I want to make sure that it clearly appears that he knows what the policies are.

MR. MCCUTCHEN: Well, I think you may ask him about [140] the policy. I think this is what you asked the last gentleman.

MR. KALE: If it please the Panel, I think he can testify to facts. What opinions are, whether the President of the corporation has an opinion goes on I don't know if that's relevant or not, but I'm sure he can testify as to the facts he knows of his own personal knowledge, we would not object to that.

MR. MCCUTCHEN: Well, I would assume that this is what he was going to say, of his own knowledge, what they did with reference to payment or nonpayment of fees.

Q. (By Mr. McDonald) What is the policy of the ACLU's regarding -- before I ask you that question let me ask you this: You talked about a staff attorney. Tell me how the ACLU undertakes to secure representation for individuals? A. You mean so far as cooperating attorneys are concerned?

Q. Yes, and I'm asking you about staff attorneys as well. A. Right. Well, as I said, we have one staff attorney who is employed by the North Carolina Civil Liberties Union whose income is derived from dues prescribed by membership. The staff attorney is paid a salary. I have forgotten what it is now, it was \$150.00 a week but I'm not sure what it is right now. The staff attorney receives nothing other than this salary. We have in North Carolina a number of cooperating attorneys. I would estimate that we have at [141] least 30 that we can count on regularly. And in specific areas, or for specific cases, we get assistance [sic] from others. None of these cooperating attorneys are allowed any fee whatsoever.

That's provided in the policies of the ACLU and the North Carolina Civil Liberties Union. They are allowed out-of-pocket expenses such as travel and overnight accommodations but they are not allowed to receive any compensation. If they were the ACLU and the NCLU would not long stay in business because of the tremendous amount of attorneys fees that would be involved. So we survive because the attorneys contribute their services gratuitously.

Q. What happens if attorneys' fees are awarded by the court in a case in which the cooperating attorney is involved? A. The cooperating attorney receives none of this fee in case of award by a court of attorneys' fees in some case. They are not allowed to accept it; the purpose of that being it's thought that it might become selective of clients if we did that. It's a good policy not to do it. The client is not even allowed to pay the cost of court because even that might make us more selective whether it would or not, so we don't do that either. An award of attorney's fee, as I understand it, is paid to the organization itself but not to any attorney. In North Carolina I don't know

of any attorneys' fees we have been awarded, we may have but it's been a very insignificant portion of the budget. [142]

MR. KALE: May it please the Panel, if he is testifying as to what goes on in North Carolina I don't see what the relevance to this particular proceeding is.

MR. MCDONALD: Well, your general observations about the disposition of attorneys' fees is part of the national policy.

THE WITNESS: Yes, this is a national policy.

Q. (By Mr. McDonald) What about awards of damages, what's the disposition of that?

A. The damages all go to the client. The attorney nor the organization receive any portion of that, of the damage award.

Q. Now, does the American Civil Liberties Union believe that it has -- well, what is the purpose of the organization, the American Civil Liberties Union? A. Well, the purpose of the organization is to advance and defend the cause of civil liberties under the protection of the United States Constitution.

MR. MCCUTCHEN: Counsel, I think we have indicated before that we really have no bones to pick with the ACLU and we are not trying them. The Panel really doesn't see that the purpose of that organization is an issue in this lawsuit at all, we are not trying this organization or the North Carolina chapter.

MR. MCDONALD: That would go, Mr. Chairman, I [143] think, to the question of whether the activities of the Respondent were protected in that at some point they were on behalf of an organization specified in the Canons as clearly having an obligation and certainly the right to advise members of the public to their legal rights and remedies and to make counsel available to them and to even accept employment, I might add, which grows out of those activities. And I just want to establish that the ACLU does have that as its purpose. And that would be the sort of information which we would try and get into evidence through this witness' testimony.

MR. MCCUTCHEN: The Panel has concluded that that particular line of questioning really isn't relevant. We are concerned here with the Respondent, Edna

Smith. And I don't think the underlying purposes of the American Civil Liberties Union really is germane to this inquiry [sic] at all.

MR. MCDONALD: All right, sir. We would simply then, with your permission, offer to show that this witness would testify that the ACLU is in the nature of a legal aid or public defender office, and that it is operated and sponsored by a legitimate nonprofit organization. And that one of its purposes is to educate layman as to their rights and their remedies and to make counsel available to them.

MR. MCCUTCHEN: Is there any question in your [144] mind that that's the purpose? I don't know what relevance it has. Isn't this a matter that there isn't any dispute about.

MR. KALE: I don't have any dispute about it.

MR. MCCUTCHEN: The Panel is still of the opinion that right now we don't see the relevance of it. I don't know that there is any dispute as to what it is or what it does or what its purposes are.

MR. MCDONALD: All right, sir.

MR. MCCUTCHEN: And it seems to me we

could shorten this type of thing by simply stipulating, for whatever it's worth, that this is what the American Civil Liberties Union is, this is its purpose and this is what it does.

MR. MCDONALD: All right, sir. There would be one other matter in which I think the same objection of relevance would be made and probably sustained by the Panel; and that is the impact which the witness has observed that the ACLU has had on securing access to individuals with constitutional grievances and redress thereof; and that through the activities of the ACLU individuals have, with greater frequency, been able to seek redress of constitutional violations in the courts. And we would offer to prove that testimony from this witness.

MR. MCCUTCHEN: I think the Panel would take the [145] same as you have indicated. We take the same position that we stated earlier, that that's not an issue that we think is germane. You may state into the record your offer of proof.

MR. MCDONALD: All right, sir. Just one minute, please.

Q. (By Mr. McDonald) Do you have any knowledge of when the South Carolina Chapter

of the American Civil Liberties Union was formed? A. No, I do not.

Q. Now, does the ACLU have as one of its policies that in the absence of a specific request for representation that it has an obligation to advise persons of their remedies and to inform them of the willingness of the Union to secure representation for them? A. Yes, in certain cases of great import they do, they have an obligation to.

Q. Is it the Union's judgment that it is protected in that regard by --

MR. KALE: Objection.

MR. MCCUTCHEN: Yes, sir, the Panel sustains the objection.

MR. MCDONALD: All right. Well, we would just simply offer to show that this witness would testify that the ACLU relying upon cases such as NAACP v. Button and the [146] cases which followed, the trainman's case and the mine worker's case, that the ACLU regards that that authority for the ethicality and the constitutionality of their position as a guide.

THE WITNESS: If I might add, Your Honor, that is specifically set out in the policy guide of the ACLU and it relies,

for that policy, upon NAACP - Button and several cases following it.

MR. CRUM: Are those policies in writing?

THE WITNESS: Yes, sir.

MR. MCDONALD: I direct the Panel's attention to page 8 of our memorandum.

MR. MCCUTCHEN: We have seen it.

MR. MCDONALD: It's set out. Thank you, very much, Mr. Lambert. Would you answer any questions Mr. Kale may have?

CROSS EXAMINATION:

QUESTIONS BY MR. KALE:

Q. Mr. Lambert, I believe you were asked certain questions about what the ACLU does with the attorneys' fees. Does this go into the ACLU organization? A. The attorneys' fees goes into the organization and not to the attorney.

Q. And it's used for the benefit of the organization? A. Yes, sir.

[147] Q. And a primary purpose of the ACLU is litigation? A. That's one of the purposes, yes, sir.

MR. KALE: No further questions.

(Thereupon Mr. McLain [sic] was excused)

(discussion off the record)

GARY ALLEN, a witness on behalf of the Respondent, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

QUESTIONS BY MR. MCDONALD:

Q. What is your name, please, sir?

A. Gary Allen.

Q. And where do you reside, Mr. Allen?

A. 539 Chesterfield Street, Aiken, South Carolina.

Q. And how long have you been a resident of Aiken? A. I have been a resident of Aiken, in the city there, about twenty -- I've been in this location about 28 years, about 32 years. I've been in the county all my life, my days.

Q. Are you involved in any community affairs? A. Yes, I am.

Q. Tell me what affairs those are.

A. Well, I try to play the role of trying to help the poor people in the county, city, with problems from any form of discrimination, any violation of their rights we feel, help secure food stamps, social security, weelfare [sic], or what not, help get people out of jail, you know, where we [148] feel their rights are being abused in any respect.

Q. Do you work with an organization?

A. Yes, I do.

Q. What's the name? A. One of them is the South Carolina Association for Improved Justice.

Q. And are there others? A. Yes. I'm the President of that operation. Also the United Christian Workers Association, also the President of that organization.

Q. Where are those organizations based? A. They are based -- South Carolina Association for Improved Justice is a state organization. And the United Christian Workers was organized there in Aiken County but, of course, we have members all over the state, you know, different parts of the state.

Q. What are the purposes of those two organizations? A. Well, the Association for Improved Justice mostly deals with the criminal system of justice, to try to see that people get fair trials, and that they are represented by counsel, they are not railroaded in court. And somebody is in jail we try to help get them out, get the judge to release him on his own recognizance or either try to get them out on a bond, somebody post a bond if it's necessary to

to get them out. I try to kinda work between the people and, [149] you know, the law and the court; try to make it easier for poor people because they just doesn't have the representation there in Aiken very much, the lawyers is --

MR. KALE: Objection as to any statements about lawyers in Aiken it's not relevant.

MR. MCDONALD: Well, we -- is it easy for the sort of people that you have just been talking about, minority groups and those with limited education, to get representation in your community?

THE WITNESS: No, it's not --

MR. KALE: Objection. I don't know what his qualifications are. He can speak from his own experience on anything he might have had but whether he can talk the problems other people have, I don't know, that would be a conclusion on his part.

MR. MCDONALD: Well, he is President and member of an organization for whom that is a major concern and I think he can clearly is competent to testify about that.

MR. MCCUTCHEN: The Panel still feels that this is, once again, an area that

really isn't involved in this particular proceeding, whether they are difficult to get or not difficult to get. We think the objection is well taken. You may offer --

MR. MCDONALD: All right, sir, I will just offer that this witness would testify that it's difficult for [150] minority people in Aiken County to secure representation particularly in unpopular causes where they have been agrieved [sic] by members of the majority community.

Q (By Mr. McDonald) Now, Mr. Allen, this other organization that you talked about, tell me what its purpose are. A. Well, the United Christian Workers, mostly we deal with people that have a problem with the weelfare [sic] department, you know, trying to get their checks; social security checks, unemployment checks, discrimination against jobs, any form of discrimination that we are aware of and brought to our attention we try to help, you know, bring about a change, you know, in our city.

Q. Do you work primarily then in the minority community in Aiken? A. Yes, sir.

Q. Now, do you know Marietta Williams? A. Yes, sir, I do.

Q. Tell me how you came to know her.

A. Well, I have been knowing Marietta for quite some time, I don't know exactly how long. I knew her mother. Well, I guess I have known her mother for 25 years, 30 years. And I just met there in Aiken, you know.

Q. Had you ever had occasion to consult or advise Marietta? A. Yes. During, I guess, about the latter part of Spring, early part of Summer, I talked to Marietta about this [151] sterilization thing that came out in the paper. I was informed that she was one that was victimized under sterilization, had been sterilized. So, at that time, I talked with her about this matter.

Q. What was the conversation that you had? A. Well, I -- she was somewhat upset. Her baby was in the hospital at that time and she was -- well, it appeared to me that she was angry, you know, and she had been raising sand with -- because she felt she had been mistreated by the doctor. And so I, you know, informed her that I was trying to get some of the girls that were involved in this thing, you know, to try and see if we could help them get this practice stopped

in Aiken because we felt that was a violation of their civil rights.

Q. Did you undertake to do anything on her behalf? A. Yes, I called the Counsel [sic] on Human Rights office here in Columbia and asked them if they could assist us in this case to try to get somebody to represent the girls in this case, have somebody come down and talk with them. And I got, I think it was two or three of them together and they met at my office to discuss the case with Miss Smith from the Human Rights, you know, office here in Columbia. And, you know, we discussed it and found out what could be done, if anything, you know, about this and what rights they had under the law and whether or not their civil rights had [152] been violated.

Q. Did you have any conversation with Mrs. Williams thereafter? A. I talked to Mrs. Williams -- I was in contact with her, if she didn't call me I would probably call her every day there for a while. And so she said she -- they desired --

MR. KALE: Objection, Your Honor, it's hearsay.

MR. MCDONALD: Well, it's not hearsay, it goes to the prior inconsistent statements and clearly not hearsay.

THE WITNESS: Mrs. Williams told me --

MR. KALE: Well, let the Panel rule on this matter.

MR. MCCUTCHEN: The Panel is of the opinion that the evidence is proper and we will permit you to answer the question.

MR. MCDONALD: Please proceed, Mr. Allen.

THE WITNESS: I talked with Mrs. Williams and she told me she would like to talk with counsel, have them come down and discuss this matter further with her and, you know, see what could be done. And so then I contacted the office here in Columbia and also sent a letter that asked them to come down and discuss it with the clients, you know, that had been victimized by this doctor.

Q. Did you have any conversation with Edna Smith relating to Marietta Williams?

A. Yes, I talked with Edna Smith on the telephone after I called the counsel [sic] and we had conversation on the telephone maybe [153] two or three times about it, about this matter.

Q. What was the nature of those conversations? A. Well, we requested that Miss Smith to come down and meet with the

girls and discuss with them -- they wanted to talk with them about what could be done. And, at that time, Miss Smith, you know, she came down later and talked with them.

Q. Did you specifically discuss Marietta Williams in those conversations with Miss Smith? A. Well, Marietta Williams was one of the girls that -- there were two other girls also in this; Mrs. Dorothy Waters and Mrs. Virgil Walker was also the other two girls that was part of this. Well, the part of this action was taken against him. And so they also wanted to talk to Miss Smith about what could be done about it.

Q. Did you indicate to Miss Smith that Marietta Williams wished to secure representation in this? A. Yes, I did.

Q. Was this following that first meeting in your office? A. It was following the meeting in the office.

Q. Well, all right. Thank you sir. Answer any questions, if you will, that Mr. Kale may have.

CROSS EXAMINATION:

QUESTIONS BY MR. KALE:

Q. Mr. Allen, I didn't catch that first organization, not the [154] United

Christian Workers but the other organization. A. South Carolina Association for Improved Justice.

Q. And you say the purpose of that is to improve the criminal system of justice in South Carolina? A. Yes, to try to -- we deals with mostly the criminal system of justice where the people are being tried in court to try to see they get proper representation. And someone is in jail we try to help get them out and get a bond or get the judge to release them on self recognizance.

Q. Let me ask you this: Have you even been convicted of a crime? A. Yes, I have.

Q. What crime was that? A. That was concerning my business that I was in.

Q. Do you know what the crime was? A. It was conspiracy, I believe, and forgery.

Q. Did you serve a jail sentence for that crime? A. Yes, I did.

MR. KALE: I have no further questions.
EXAMINATION BY MR. CRUM:

Q. Mr. Allen, what is the source of your livelihood? A. I'm a new and used car dealer.

Q. I believe you testified earlier that Mrs. Williams told you that she didn't want to bring an action against the doctor.

[155]* A. I said she did.

Q. Well, didn't you testify to that?

A. Yes, I did.

Q. Was anybody else in your presence or within hearing when she made that statement to you? A. Well, that was around to her house and I believe her grandmother was there at that time.

Q. But there was no one else to corroborate that statement? A. Well, now, we discussed this at the meeting that day. It was three; Mrs. Dorothy Waters and Mrs. Shirley Brown, I believe is all at that meeting that day at my office.

Q. I thought this was after that, I gathered this was after that initial meeting that she told you that. A. This was after the meeting she said, you know, wanted to talk --

Q. And I believe you told me you contacted her several times. A. I talked with her. She called me some and I called her.

Q. But there is no other witness that can confirm this statement? A. Well, her mother was there. I don't know Mrs. Dorothy

* This is the first of two pages numbered "155."

Waters was there at the time, not to her house, no. But we talked about this on several occasions, about getting somebody to represent the girls.

Q. Just the two of you talked about it, there was no third party? A. Well, all of us talked about it. [155]*

Q. Well, now, who is all of us?

A. Well, I mean, Mrs. Williams, and I believe her grandmother was there, and they came by my office one time also, and my secretary was there.

Q. Did she hear the conversation?

A. Yes, she heard it.

MR. CRUM: I have no further questions.
EXAMINATION BY MR. MCCUTCHEN:

Q. Do you have any idea how many times you had talked to Mrs. Williams before this meeting with Miss Smith and the others in your office?

A. I don't know. Well, when the thing first blew up Mrs. Brown -- this thing came out in the paper, you know, about this lady, and her husband was in jail, had been, you know, sterilized. This started the ball to rolling. So then people in the community began communicating about what was going on around Aiken and what

*See note previous page.

could be done about it. So this is when we called a meeting, and our organization also met to discuss this and decided what, you know, we should do to try to correct this problem.

Q. Well, my question was directed to Mrs. Williams. A. How many times?

Q. How many times did you talk to Mrs. Williams before this meeting? A. I would say -- you mean Miss Edna?

Q. Yes. [156] A. I would say at least on two or three occasions I talked to her. She called me a time or two I know. I called her house and she came out to my office. And I also went by her house to talk with her. This was a kind of touchy situation for me to get into it being a man, when a lady has had this thing done to her it's a touchy situation so I just couldn't barge in, you know. So I tried to, you know, go at it kinda easy and see what I could do to help the girls.

Q. Well, did she call you first or did you approach her first? A. I approached her.

Q. Was the litigation discussed when you first met in your office, about the type of lawsuit that could be brought? A. The type of lawsuit to be brought?

Q. Yes, when you had the meeting at your office? A. We didn't go into the lawsuit too much on the first occasion because that was just to kinda advise the girls of their rights and sit down and discuss the matter.

Q. Well, were they advised, at that time, that they could bring these suits? A. They were advised that they had a right to if they so desired.

Q. To bring the lawsuit? A. Well, I mean, take some action, you know, against the doctor.

[157] Q. Well, you are talking about legal action, that they had a right to bring legal action, is that what you are telling me? A. Well, now, I had already advised them that because they had a right -- I felt they had a right to legal action.

Q. This was discussed again when you met with Miss Smith and the others at your office? A. Well, we mostly talked about -- we were trying to get together how many people was involved and kinda get ahold of the thing. And then later we decided that we would contact the office again for representation for the lawyer to come down and discuss this matter with the girls and advise

them of all their rights and what could be down because of the fact we felt their rights had been violated by this doctor.

MR. MCCUTCHEN: That's all I have.

EXAMINATION BY MR. CRUM:

Q. Did you discuss with Mrs. Williams whether or not she felt her rights had been violated by the doctor? A. Beg your pardon?

Q. Did you discuss with Mrs. Williams whether or not she was of the opinion that her rights had been violated by the doctor?

A. Yes, I did, I discussed it with her.

Q. What was her opinion as to her rights? A. Well, Mrs. Williams, she was somewhat upset about it and she felt like she wasn't treated right. And so I told her [158] I didn't think it was right either.

MR. CRUM: No other questions.

MR. KALE: I would like to just ask one more question, if I may.

RE CROSS EXAMINATION:

QUESTIONS BY MR. KALE:

Q. Mr. Allen, do you know if Marietta Williams has anything against Miss Smith, any personal grudge or other animosity? A. Not that I know of.

Q. She would have no reason to

hurt Miss Smith that you know of? A. I don't know. Let me say this: Marietta Williams, to my opinion, is --

Q. Well, no, answer the question --

MR. MCDONALD: He has asked the question and he doesn't want to hear the answer.

MR. KALE: Well, he is not being responsive to my question.

MR. MCDONALD: He doesn't want to hear the answer but he has got a right to respond to it.

MR. KALE: He doesn't have a right to respond to something I didn't ask him.

MR. MCDONALD: Well, let him respond to it. How do you know? Let him finish.

MR. KALE: I asked the question, "Do you know" --

MR. MCDONALD: I think he is entitled to answer [159] the question --

MR. KALE: I'm going to repeat --

MR. MCDONALD: I would like a ruling from the Panel.

MR. MCCUTCHEN: Well, repeat your question.

Q. (By Mr. Kale) Do you know if Marietta Williams has any dislike for Miss Smith? A. Not that I know of personally.

Q. Okay.

MR. MCDONALD: All right, sir, now, would you explain your answer. [Y]ou were going to explain that answer.

THE WITNESS: What I was about to say, as I stated, Marietta Williams was upset, you know, she is here a while and she is there a while. And she seemed to be a little bit disturbed and she was very upset about this thing. When you talked to her today she is one way and tomorrow you talk with her and she is another way. And so it just -- I think she is mentally disturbed.

MR. KALE: Objection, Your Honor, I don't think that's something he can testify to.

MR. MCDONALD: Now, with all respect, he asked him what he thought about motivation, and the witness is trying to explain it. Now, I know he doesn't want this --

MR. KALE: No, I didn't ask him that at all.

MR. MCDONALD: -- want to hear this --
[160]

MR. KALE: I didn't ask him any question about --

MR. MCDONALD: -- and I think the witness is entitled to explain it.

MR. MCCUTCHEN: I think the witness has pretty well said that she was one way one day and one way the next. It seems to me that that's sufficient. I think the Panel understands.

MR. KALE: My objection was to his classification that she was emotionally disturbed. I don't think he is competent to make such a determination.

MR. MCDONALD: Are you familiar with her reputation in the community, Mr. Allen?

MR. KALE: Objection, Your Honor.

THE WITNESS: Yes, --

MR. MCCUTCHEN: No, I don't think --

MR. KALE: I'm objecting to this.

MR. MCCUTCHEN: -- the reputation of Mrs. Williams really has any --

MR. MCDONALD: Your Honor, I want to ask him about reputation for stability, that's the real question that I want to ask him.

MR. KALE: What does that go to? I don't see the relevancy.

MR. MCDONALD: All right, sir, let me just make an offer, if I may, that this witness would testify --

[161] MR. MCCUTCHEN: Well, let the record show that the Panel doesn't think

this question is proper. Put into the record your offer of proof.

MR. MCDONALD: Yes, sir. That this witness would testify that Mrs. Williams has a reputation of being unstable in the community, and that she is changeable and subjective and take one position, as he said, one day and another position the next. That's all I have. If the Panel has nothing further.

MR. MCCUTCHEN: We have nothing else.

(Thereupon the witness was excused)

MR. MCDONALD: We have some documentary evidence that we would like to introduce. We have no further testimony. We would like to introduce into evidence a deposition of Eldon D. Wedlock taken in litigation, Doe v. Pierce, Civil Action Number 74-475. And the letter of August 30, 1973, attached as an exhibit to this Affidavit. And that will show that it was in the hands of an attorney associated with the Attorney General's office as of April 29, 1974.

MR. KALE: Your Honor, I would object, I don't see what the relevancy of what Mr. Wedlock's deposition is with this particular proceeding.

MR. MCDONALD: Well, it goes to our whole question of initiation of the Complaint and the forwarding of the [162] letter. You see, our position is the letter was in existence more than a year prior to the filing -- institution of these proceedings. And we believe that there was an ethical violation --

MR. KALE: In whose hands?

MR. MCDONALD: In attorneys for the Defendant in Doe v. Pierce.

MR. KALE: Which Attorney, specifically, are you referring to?

MR. MCDONALD: Well, the witness testified that Mr. Johnson received a copy of the letter. This deposition would show that attorneys in the office of the Attorney General of this state had in their possession the letter as early as April 29, 1974. We previously requested, by letter to Mr. Williams, to inform us of the date of the transmittal of this August letter to this committee. We believe -- [a]nd alleged upon information and belief that it was some five months following this deposition.

MR. CRUM: Where was that allegation made? I don't see it in the record of this case.

MR. MCDONALD: I believe, in our answer, Your Honor, we set up as a defense that the proceedings were not instituted in good faith but retaliation [sic] for bringing this lawsuit. And a part of our proof would be that the letter existed for a year before anybody did anything about it.

[163] MR. MCCUTCHEN: What proceeding are you talking about that was not instituted in good faith?

MR. MCDONALD: By that I mean not what this Board did but that the sending of the letter was not in good faith. And I just simply want to show that people -- that the letter was in existence for a year or so, and the attorneys had knowledge thereof, and they only forwarded it to the Board; number one, after the Doe v. Pierce lawsuit was filed and after Judge Blatt ruled in that case there had been no impropriety in connection with the bringing of Doe v. Pierce based upon allegations --

MR. KALE: Your Honor --

MR. MCDONALD: We also want to point out to the Panel that Judge Blatt's ruling was withheld, as I understand, upon information and belief, from the Committee on Grievances and Discipline. And we contend

that that was clearly helpful material to the Respondents. And that had Judge Blatt's ruling [sic] been available in Doe v. Pierce the Complaint possibly would not have been filed. But in that connection I would like to introduce the deposition of Mr. Wedlock and also the deposition of Mary Roe which contains the ruling of Judge Blatt. And finally we did correspond with the Secretary of the Committee on Grievances and Discipline and requested him to tell us when the August 30 letter, which forms the basis for this complaint, [164] was forwarded to the Board and the name of the individual who forwarded it. And that information has not been provided to us and I would renew that request at this time so that the record can be clear in that regard.

MR. KALE: Does counsel contend that there is a statute of limitations on ethical violations?

MR. MCDONALD: No. There are the cases that hold that the weight -- well, we argue the matter in our brief. I think it goes to two things really. When the evidence is procured from a party who has an adverse interest in other litigation then it's not entitled to the same weight before the disciplinary committee. It also shows that

the letter was forwarded to the committee not because of any concern with an ethical violation but to take advantage of something to retaliante [sic] against the Respondent. We cited the cases in our brief; the Linsky Case, for example involved a net worth tax prosecution, and the clear language there is you can't seize upon even unlawful conduct to punish somebody or retaliante [sic] against them for behavior that's basically not related to the unlawful act. And these documents are evidence of that proposition if you accept the Respondent's position.

MR. KALE: May it please the Board, this matter was brought up in Federal Court before Judge Chapman and Judge Chapman ruled on all of these matters which counsel [165] has now presented here. I would like to put into evidence his Order dismissing the complaint. He found that Judge Blatt did not have the issue of solicitation before him, that at most it was -- well, let me just read what he has in his Order. May I read this to the Panel?

MR. MCCUTCHEN: Go ahead.

MR. KALE: "This Court cannot follow the plaintiffs' contention that Judge Blatt in his comments quoted above from Doe v. Pierce, decided the issue of solicitation

in such a manner that it has become res judicata or acts as a collateral estoppel binding upon either the Board or the Supreme Court of South Carolina.

The receipient [sic] of the letter from Koe was not a party to the case. Plaintiff Koe did not represent any party in that action and was not directly involved therein. There is no indication that she was questioned by the attorneys or by Judge Blatt. Certainly the Judge was not conducting a hearing as to possible disciplinary actions at the time he made his statement, which makes it clear that he was allowing questions as to solicitation, solely because it might go to the issue of the validity or appropriateness of the class action.

A United States District Judge sitting alone could not bind the South Carolina Supreme Court on what disciplinary inquiry it might make into the affairs of an attorney [166] admitted to practice in South Carolina by the South Carolina Supreme Court, and subject to the Canons of Ethics adopted by that Court. This is particularly true where the issue of solicitation is raised collaterally to the matter before the

Federal Judge." Then he cites *Ginger v. Circuit Court for County of Wayne*. And I will admit this into evidence so you can read it, the full amount. I will not quote the case citation.

Then he goes on: "The complaint alleges in paragraph 14" --

MR. MCDONALD: What page are you reading from, Mr. Kale?

MR. KALE: Eight. "The complaint alleges in paragraph 14: "The Board has no authority to supervise or discipline the conduct of attorneys in their practice before the courts of the United States." While it's possible, but rather unlikely, an attorney could practice before the federal courts after being disciplined, suspended or disbarred by the State Supreme Court. However, this does not mean an attorney's actions in obtaining, preparing or presenting cases in the federal court are exempt from the State Canons of Ethics, and such actions are not shielded from the scrutiny, concern and control of the State Supreme Court, which has the responsibility for maintaining the high standards of the legal profession and the integrity [167] of the Bar." That's just an exerpt from

his Order but it covers these matters as far as statements that were made in the deposition by Judge Blatt which he has offered. We do not, again, feel that they are permissible here, they are certainly not of any evidentiary value. What other matters did you submit besides his deposition?

MR. MCDONALD: I submitted two depositions, the deposition of Eldon Wedlock and the deposition of one of the Plaintiffs contained in the ruling of Judge Blatt.

MR. KALE: As far as the deposition of Mr. Wedlock, I don't know what purpose he is offering that but obviously it's not relevant to this particular proceeding. I would like to admit this into evidence.

MR. MCDONALD: We have no objection.

MR. MCCUTCHEN: The Panel will accept the documents that you have offered for whatever they might be worth, the two depositions and the copy of Judge Blatt's, subject to Mr. Kale's objection.

MR. MCDONALD: Well, let's see, one of those depositions makes reference to Plaintiffs by name. And, of course, that was a John Doe proceeding -- or a Jane Doe proceeding -- I'm sorry -- to preserve the

anonymity [sic] to the extent that that's possible, the Plaintiffs. Could I request permission to mark through the names as they appear?

MR. MCCUTCHEN: Sure.

[168] MR. MCDONALD: I would just simply point out to the court that --

MR. CRUM: Let me ask you a question, please. Is it your position that the source from which evidence is procured upon which a complaint may be issued in a grievance proceeding is governed by the manner in which notice of that complaint is received?

MR. MCDONALD: Well, the timing is crucial, I think, Mr. Crum.

MR. CRUM: You mean, timing has something to do with whether or not there is a violation of professional ethics?

MR. MCDONALD: It was not apparently regarded by -- I think the inference is strong that it was not regarded as a violation until the lawsuit was filed. So that the furnishing of that letter to the Board suggests that concern was not for the violation but retaliating [sic] against the individual who had some involvement in that litigation. Plus there is other

evidence too, Mr. Crum, to show that there was evidence that was withheld from the Board. That is Judge Blatt's ruling which, I think, is an obligation on the state to make everything available. I don't think the prosecution, for example can withhold any, I think that's clear -- Brady v. Maryland -- you can't withhold exculpatory evidence, and I think that clearly happened [169] here. Also, it's apparent -- we requested that the exact transmittal date be given to us but it appears that not only was the letter not forwarded to the Board until after a lawsuit was filed but not until after Judge Blatt ruled that it had no -- that it furnished no basis for a defense in that lawsuit. So I think it's the combination of occurrences strongly suggest that there was a retaliatory [sic] element involved.

MR. KALE: I feel it's necessary for me to make some reply to this statement. First of all his characterization of Judge Blatt's ruling, as I said, in this particular order of Judge Chapman it was no ruling involved as far as solicitation. As a matter of fact, from talking with the attorneys involved Judge Blatt made the

statement that this was particularly a matter for the South Carolina Bar and not a matter for him. Now, I was not present and I cannot say that of my own knowledge. But since he has made an offer of proof which he hasn't substantiated by any testimony I would offer this for the Panel's consideration because I feel like he has impinged upon the integrity of my office. And furthermore, he has made no statement as to when these matters were forwarded over or when they had knowledge -- knowledge came to our particular office. I think that he is dealing in speculation and events that he has no personal knowledge of. And we would ask the Board not to consider [170] these statements.

MR. MCDONALD: No, sir, not the Board; that the letter. When I used the word initiated I mean the letter was sent, that's what I mean by initiated. I've asked -- we know certain facts and Mr. Kale shouldn't say that I'm making representations not supported -- Marietta Williams testified that she made the letter available to Mr. Johnson when she went to see him which was in August, September, at the latest, 1973, showed him the letter. All right, we know

that the letter came to the attention of the Attorneys in the Attorney General's office at least as of the date of the deposition of Mr. Wedlock because it's read into the record and attached to that deposition on April 29, 1974. Now, I don't know when the letter was sent to you gentlemen but I have requested Mr. Williams to tell me. Of course, you know we are alleging --

MR. MCKEOWN: I don't personally know, the members of the Panel do not know.

MR. MCDONALD: Well, Mr. Williams, I assume, would know. We are alleging, I believe, upon information and belief. Of course, I don't have -- and I requested that I be furnished that data. And I think the Board, the Panel would be interested.

MR. MCCUTCHEN: Mr. McDonald, is there any question in your mind that the handling of this particular proceeding [171] insofar as the Board of Commissioners on Grievances and Discipline is in anywise irregular?

MR. MCDONALD: No, sir, we make no such allegation. In point of fact, we surmised that had this Board been fully apprised of Judge Blatt's ruling that the complaint would never have issued. Judge

Blatt did make a ruling which is for the members of this Panel to determine what he said. And Judge Chapman made a ruling and it's for the members of this Panel to determine what he said. But as I read this Order he dismissed it on the undergrounds on the theory that he simply was not going to interfere. And he talked about the bad faith and he said, well, they have got to show more than that, they have got to show other things. I don't think it's as positive, Mr. Kale does, but that's a decision for you gentlemen. And I wanted to put the documents before you and have endeavored to do so.

MR. KALE: I might say that Mr. Johnson -- I can't speak for Mr. Johnson, Mr. Johnson has no connection with my office whatsoever. And what actions he takes or does not take are strictly Mr. Johnson's actions. As far as Judge Blatt's statement again we disagree on what the interpretation of those provisions are, but I would merely say that this matter was considered by Judge Chapman and even if, which Judge Chapman found that he did not, even if Judge Blatt had ruled, Judge Chapman's decision makes it clear that that [172] is

not binding on this Board or the South Carolina Supreme Court.

MR. MCCUTCHEN: Well, I think we have indicated that we would permit to put the records in that you have identified for whatever they might be worth.

MR. MCKEOWN: We would just ask that the Reporter mark them and put them in the record.

MR. MCDONALD: Can I take a black pencil and strike out the names?

MR. MCCUTCHEN: Sure.

MR. MCDONALD: I don't know how we ought to -- Well, let me just say that we renew the request that we be furnished with the information showing the date of the transmittal of the letter and the identity of the individual be made available --

MR. MCCUTCHEN: Well, this Court has no information on that at all. We are simply given the complaint and the answer and we are told to hear it. We have no other material at all. And your motion is in the record.

MR. MCDONALD: All right, sir.

MR. CRUM: If you had wanted that couldn't you have made a motion?

MR. MCDONALD: Well, I wrote a letter.

Let me introduce it.

MR. CRUM: Couldn't you have made a motion that [173] would have some binding about it rather than this? A motion to produce would have done it, wouldn't it?

MR. MCDONALD: Well, I wrote a formal letter and I intended for that to have that effect. Let me introduce that letter into evidence, if I may, so there won't be any question about that. I apparently don't have a copy of my letter but it would be in the possession of Mr. Williams. And I think that's clearly part of the record for this Panel, and I request that this Panel take notice of that letter. That concludes the Respondent's case. We would renew our motion for dismissal of the complaint.

MR. MCCUTCHEN: At this point we will take your motion under advisement along with the balance of the record. Is there anything else from the Attorney General?

MR. KALE: No, Your Honor. We have requested a right to respond to their pre-hearing memorandum.

MR. MCCUTCHEN: I understand that, you made it earlier. If they have any reply you will have the opportunity to reply.

MR. MCDONALD: All right, sir.

(Thereupon Complainant's Exhibit C-3, Respondent;s [sic] Exhibits R-2 and R-3, marked in evidence)

(4:10 o'clock P.M)

CERTIFIED TRUE AND CORRECT:

s/ Joseph D. Smith
JOSEPH D. SMITH, Notary Public

EXHIBIT C-3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

American Civil Liberties Union)
and Jane Koe,

Plaintiffs,

vs.

O. Harry Bozardt, Jr., H.
Hayne Crum, Joseph O. Rogers,
Jr., Marion H. Kinon, Edward
M. Royall, II, George F. Cole-
man, Robert A. Hammett, Thomas
J. Thompson, Coming B. Gibbs,
Jr., Lowell W. Ross, Frank E.
Harrison, J. Malcolm McLendon,
C. Thomas Wyche, William L.
Bethea, John B. McCutcheon,
Melvin B. McKeown, Jr. indivi-
dually and as members of the
Board of Commissioners on
Grievances and Discipline, and
their successors; and the
Attorney General of South
Carolina,

Defendants.)

[Filed Dec.
12, 1974]

) Civil
) Action
) No.
) 74-1703

) O R D E R

This action is brought by American Civil Liberties Union, hereinafter referred to as ACLU, and Jane Koe, hereinafter referred to as Koe, who is a practicing attorney in Richland County, South Carolina, and is using the fictitious name of Jane Koe to protect her privacy and

professional reputation. The plaintiffs ask this Court to enjoin the Attorney General of South Carolina and the members of the Board of Commissioners on Grievances and Discipline, hereafter referred to as Board, who are appointed and elected pursuant to the Rule for Disciplinary Procedure of the South Carolina Supreme Court. The complaint also seeks costs, plus attorneys' fees and a declaration by the Court that the pending complaint against Koe before the Board is in violation of her rights under the First and Fourteenth Amendments to the Constitution of the United States.

The defendants have moved to dismiss the action on five separate grounds, but since the dismissal will be granted, it is necessary to discuss only the grounds supporting dismissal.

On October 10, 1974, Koe received a notice and a complaint from the secretary of the Board, which complaint alleges on information and belief that Koe committed an act of misconduct as an attorney by writing a letter dated August 30, 1973, to an individual in Aiken, South Carolina, which the secretary of the Board considered to be a solicitation in violation of the

Canons of Ethics. The complaint prays "that the Board of Commissioners on Grievances and Discipline consider these allegations and make such disposition as may be appropriate."

Koe contends that since she is associated with the ACLU as a cooperating attorney, is an officer of the South Carolina affiliate of the ACLU and serves in both capacities without fee or pay or any expectation thereof and since she had no financial interest or expectation of gain or reward in connection with the correspondence or any representation that may have been produced thereby, she is not guilty of violating any of the Canons of Ethics and the action of the Board amounts to harassment, was taken in bad faith and for the purposes of chilling and discouraging the activities of the ACLU and the giving of solicited and unsolicited advice to lay persons that they should obtain legal counsel or take legal action, when their rights are being violated or threatened with violation.

The complaint alleges in part:

"7. Prior to August 30, 1973, plaintiff Koe was contacted by a Mr. Gary Allen, of whom she had prior knowledge and knew to be

acting on behalf of a Mrs. M.W. with apparent and actual authority to so act. He requested that plaintiff Koe or the ACLU undertake to represent Mrs. M.W. in an action against certain persons who procured, performed, or authorized her sterilization. In response to such request, she wrote Mrs. M.W. on August 30, 1973, stating the willingness of the ACLU to undertake to secure her representation.

8. Plaintiff Koe talked thereafter with Mrs. M.W. on several occasions about her proposed law suit. However, Mrs. M.W. elected not to proceed with litigation and plaintiff Koe's involvement with her was terminated. Other women residing in Aiken, South Carolina, however, who had been sterilized or threatened with sterilization, elected to proceed with litigation and filed a damage action through lawyers associated with the ACLU, in Doe v. Pierce, Civ. No. 74-475, D.S.C. Plaintiff Koe does not represent any of the parties in Doe v. Pierce, nor has she any direct involvement in that case.

9. Upon information and belief, attorneys representing some of the defendants in Doe v. Pierce secured a copy of the August 30, 1973, letter from plaintiff Koe to Mrs. M.W. and attempted to raise as a defense in that suit that the action was barred or rendered unlawful because of solicitation. On September 24, 1974,

during the deposing of one of the plaintiffs in Doe v. Pierce, Honorable Sol Blatt, Jr., who had knowledge of the August 30, 1973, letter, permitted certain questions to be propounded to that witness involving her contacts with plaintiff Koe, but solely as to the issue of the appropriateness of the suit as a class action. The court ruled that plaintiff Koe had not committed solicitation as follows: Judge Blatt: All right, now let the record show that the other question presented to the Court was the question pertaining to this witness as to how she came to meet or to know [Jane Koe] and so this record will be clear and recognize that the Court may clear it some that this question probably goes to the issue of solicitation. This Court feels in its posture of the American Civil Liberties Union has a duty and an obligation under the manner in which it operates to seek out and help those who it feels are not able to help themselves, either their lack of knowledge or lack of funds, the Court finds no fault with the situation out of which this suit arose with the attorneys connected with the ACLU, in contacting if that in fact did happen, the plaintiffs but the Court feels that the issue of contact or solicitation does go to the question of validity or the appropriateness of a class action. Because of that and only because of that this Court feels that it is an appropriate question to ask this plaintiff."

Plaintiffs allege that the above mentioned "ruling" of Judge Blatt involving the alleged solicitation by plaintiff Koe was withheld from the Board by the Attorney General of South Carolina or his attorneys at the time the complaint was initiated.

The letter from plaintiff Koe to Mrs. M.W. contained the following paragraph:

"You will probably remember me from talking with you at Mr. Allen's office in July about the sterilization performed on you. The American Civil Liberties Union would like to file a lawsuit on your behalf for money against the doctor who performed the operation. We will be coming to Aiken in the near future and would like to explain what is involved so you can understand what is going on."

The Board contends that this paragraph constitutes a solicitation in violation of the Canons of Ethics. This is the charge Koe is called upon to answer before the Board.

The above letter was dated August 30, 1973. The letterhead showed "Carolina Community Law Firm" with a Columbia address. The names of four attorneys were listed on the letterhead and Koe signed the letter

as "Attorney-at-Law". Although the above quoted paragraph mentions ACLU, there is no indication in the letter that Koe is acting on behalf of the ACLU, is an officer, employee, cooperating attorney or in any way connected with ACLU.

The Supreme Court of South Carolina has adopted a "Rule on Disciplinary Procedure" pursuant to its authority to discipline, suspend and disbar attorneys at law. The South Carolina Constitution, Article V, Section 4 and South Carolina Code of Laws (1962) §56-96.

The defendants, except the Attorney General of South Carolina, are the duly appointed and acting members of the Board of Commissioners on Grievances and Discipline appointed by the South Carolina Supreme Court for the purpose of investigating and making recommendations to the Court in disciplinary actions as provided by the aforementioned rule. The duties and responsibilities of the Board have been expressed by the Court in Burns v. Clayton, 237 S.C. 316, 177 SE 2d 300 (1960) as follows:

"... The Board of Commissioners on Grievances and Discipline are officers of this Court, commissioned

and charged with the duty of investigating alleged misconduct on the part of their fellow members at the Bar of this State and of reporting to this Court the proceedings of their inquiry, and their findings and recommendations The Board's report is advisory only, this Court being in no wise bound to accept its recommendation; and upon this Court alone rests the duty and the grave responsibility of adjudging, from the record, whether or not professional misconduct has been shown, and of taking appropriate and disciplinary action thereabout."

The Rule on Disciplinary Procedure provides that unless a complaint filed with the Board does not on its face state facts sufficient to charge misconduct, the secretary of the Board shall cause a copy of the complaint together with a notice to be mailed to the attorney charged. The attorney then has 20 days within which to file an answer to the complaint. After filing of the answer a formal hearing is held upon reasonable notice to the complainant and the attorney before a panel of three commissioners appointed by the chairman of the Board. No member of the panel may be a resident of the judicial circuit in which the complaint originated

or the judicial circuit in which the respondent resides. The rules also provide the chairman of the Board may request the Attorney General's office to handle prosecution of a claim before the hearing panel.

The attorney charged in the complaint has the right to appear, be represented by an attorney of his choosing, present witnesses and evidence, testify himself, cross examine the complaint and complainant witnesses and due process is observed.

If the panel finds the attorney guilty of misconduct warranting only private reprimand, the panel administers such reprimand. However, if the panel finds misconduct meriting public reprimand, indefinite suspension or permanent disbarment, the recommendation goes to the full Board which shall hear the matter after due notice to the parties and the submission of briefs and the presentation of oral argument in opposition to the recommendations of the panel. If the Board concurs in the finding of misconduct and the administering of discipline of more than private reprimand, the matter is then referred to the Supreme Court of South Carolina and the respondent attorney is again given the opportunity to

be heard. Until the proceedings are filed in the Supreme Court they are private, not open to the press or the public, unless the respondent requests in writing that they be made public.

Subsequent to receiving the notice and complaint from the Board, Koe and the ACLU filed the present action to enjoin the proceedings, and no further steps have been taken by the Board awaiting the disposition of the motion to dismiss the present suit.

In opposition to the defendant's motion to dismiss, plaintiffs have filed a 35 page brief, citing 154 different decisions, together with 13 pages of attachments to the brief. For all of this effort, plaintiffs do not distinguish their suit from the holding of the Second Circuit in Erdmann v. Stevens, 458 F.2d 1205 (1972). Little or no effort was made by the plaintiff to advise this Court of why it should not apply Erdmann, and no suggestions have been made as to how this Court can ignore it. The Erdmann case is so similar in applicable law and its reasoning is so sound and persuasive, that it answers every question or position raised by the plaintiff, except the rather weak argument of res judicata and collateral estoppel.

Erdmann was an attorney practicing in New York and brought his suit to enjoin the conduct of disciplinary proceedings against him by members of the Appellate Division, First Department, of the State of New York. The disciplinary proceedings arose out of remarks made by the attorney in a magazine article highly critical of the judges of the New York courts. He asserted that the purpose of the disciplinary proceeding was to discourage and prevent his exercise of his first amendment rights and that the same violated his rights to equal protection and due process. These are the basic claims of Koe and the ACLU in the present action.

Erdmann attempted to enjoin the judges of the court after they had refused to accept the recommendation of the Committee on Grievances of the Association of the Bar of the City of New York. The present plaintiffs attempt to enjoin the proceedings even before they are heard by the Board. In refusing the injunction and dismissing the action the Second Circuit wisely applied Younger v. Harris, 401 U.S. 37 (1971), and this Court must do the same.

It is rare to find a decision of another court which is so helpful.

After finding it had jurisdiction in the action, the Erdmann court stated at page 1208:

"The principal issue is whether, in view of the policy expressed by the Supreme Court recently in the sextet of cases headed by Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed. 2d 669 (1971), (footnote with names of other five cases omitted) Erdmann's complaint and supporting papers state facts entitling him to injunctive relief. In Younger the Supreme Court denied federal injunctive relief against a pending state criminal prosecution and held that because of the strong policy in favor of 'the notice [sic, notion] of "comity," that is a proper respect for state functions' and the Constitution's creation of a system in which the sensitivity of both state and federal courts must be recognized and balance[d], such intervention should be permitted only under extraordinary circumstances, such as where the state proceedings have been instituted or prosecuted in bad faith or as part of a campaign of harassment which, unless restrained, would cause grave and irreparable injury without providing any reasonable prospect that the state court would respect and satisfactorily resolve the constitutional issues raised. See, e.g. Dombrowski v. Pfister, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed. 2d 22 (1965). In thus reaffirming the long-established policy against

federal intervention, see Stefanelli v. Minard, 342 U.S. 117, 72 S.Ct. 118, 96 L.Ed. 138 (1951); Cleary v. Bolger, 371 U.S. 392, 83 S.Ct. 385, 9 L.Ed. 2d 390 (1963), it was recognized that unless intervention were severely restricted, alert counsel would resort to federal relief as a readily available means of disrupting or subverting legitimate state prosecutions [sic] in which constitutional issues could be resolved by competent state trial and appellate tribunals."

Although Koe alleges bad faith and harassment in the complaint, this is not sufficient, since under Younger, she must also show that unless restrained the proceedings "would cause grave and irreparable injury without providing any reasonable prospect that the state court would respect and satisfactorily resolve the constitutional issues raised." In discussing irreparable damage at page 1210, Erdmann states:

"The Appellate Division's institution of disciplinary proceedings against him admittedly represents the exercise of a function exclusively vested in it and falls far short of the Dombroski-type [sic] campaign of harassment and 'official lawlessness' described by the Supreme Court in Younger as the kind of exceptional or extraordinary circumstances warranting

federal intervention. Furthermore, there is an absence of any evidence of irreparable injury of the type warranting relief under Younger, which requires proof of injury substantially in excess of that normally considered sufficient to invoke equitable relief. In noting that to justify federal relief against a state prosecution the injury must be 'both great and immediate,' Justice Black there stated:

'Certain types of injury, in particular, the cost, anxiety, inconvenience of having to defend against a single criminal prosecution [sic], could not by themselves be considered "irreparable" in the special legal sense of that term. Instead, the threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single criminal prosecution.' (citation omitted).

The injury alleged here is no more than that incidental to any single prosecution of a quasi-criminal nature. There is no reason to assume that Erdmann's constitutional rights will not be protected by the Appellate Division, Third Department, to which the disciplinary [sic] proceedings against him have been transferred for adjudication, or, if further review becomes necessary, by the New York Court of Appeals. The competency

of New York state courts to decide questions arising under the federal Constitution, by which we are all governed, is beyond question. In the unlikely event that both of these state appellate courts apply improper standards, Erdmann could seek Supreme Court review by petition for writ of certiorari. Undoubtedly because of general recognition of the advisability of permitting state courts first to act with respect to the delicate relationship between themselves and their officers, the traditional method of obtaining adjudication of federal constitutional questions arising out of such disciplinary proceedings has been by way of the state appellate court route to the Supreme Court rather than by direct federal intervention at the initial stages. See, e.g., Schwartz v. Board of Bar Examiners, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed. 2d 796 (1957); Konigsberg v. State Bar of California, 353 U.S. 252, 77 S.Ct. 722, 1 L.Ed.2d 810 (1957); Spevack v. Klein, *supra*; Matter of Willner v. Committee of Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963)."

This Court cannot follow the plaintiffs' contention that Judge Blatt in his comments quoted above from Doe v. Pierce, decided the issue of solicitation in such a manner that it has become res judicata or acts as a collateral estoppel binding

upon either the Board or the Supreme Court of South Carolina.

The recipient [sic] of the letter from Koe was not a party to that case. Plaintiff Koe did not represent any party that action and was not directly involved therein. There is no indication that she was questioned by the attorneys or by Judge Blatt. Certainly the Judge was not conducting a hearing as to possible disciplinary actions at the time he made his statement, which makes it clear that he was allowing questions as to solicitation, solely because it might go to the issue of the validity or appropriateness of the class action.

A United States District Judge sitting alone could not bind the South Carolina Supreme Court on what disciplinary inquiry it might make into the affairs of an attorney admitted to practice in South Carolina by the South Carolina Supreme Court, and subject to the Canons of Ethics adopted by that court. This is particularly true where the issue of solicitation is raised collaterally to the matter before the Federal Judge. See Ginger v. Circuit Court for County of Wayne, 372 F.2d 621 (6th Cir. 1967), at page 625:

"A Federal District Court has no original jurisdiction of a proceeding disbaring an attorney

from practice in state courts, though in the state court proceeding the attorney may raise questions based upon his rights under the federal Constitution for eventual review by the United States Supreme Court under its certiorari jurisdiction."

The complaint alleges in paragraph 14:

"The Board has no authority to supervise or discipline the conduct of attorneys in their practice before the courts of the United States." While it is possible, but rather unlikely, an attorney could practice before the federal courts after being disciplined, suspended or disbarred by the State Supreme Court. However, this does not mean an attorney's actions in obtaining, preparing or presenting cases in the federal court are exempt from the State Canons of Ethics, and such actions are not shielded from the scrutiny, concern and control of the State Supreme Court, which has the responsibility for maintaining the high standards of the legal profession and the integrity of the Bar.

The relationship between the Court and attorneys admitted to practice before it is summarized by Justice Frankfurter in Theard v. United States, 354 U.S. 278 (1957):

"The two judicial systems of courts, the state judiciatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court. The matter was compendiously put by Mr. Justice Cardozo, while Chief Judge of the New York Court of Appeals.

"Membership in the bar is a privilege burdened with conditions" (Matter of Rouss 221 N.Y. 81, 84, 116 N.E. 782, 783). The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice."

Koe was originally admitted to the practice of law by the Supreme Court of South Carolina, and as a practicing attorney she must maintain the high standards of the profession she has chosen. This United States District Court will not now interfere with the investigation by the Board, an arm of that Supreme Court, as it determines whether Koe has conducted her

professional affairs in keeping with the Canons of Ethics.

Since the complaint fails to state facts entitling plaintiffs to federal intervention, the same must be and is hereby dismissed.

AND IT IS SO ORDERED.

s/ Robert F. Chapman
ROBERT F. CHAPMAN
UNITED STATES DISTRICT JUDGE

December 23rd, 1974

Florence, South Carolina

EXHIBIT R-1

[Bracketed materials are handwritten notations by affiant.]

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

AFFIDAVIT

Personally appeared before me the below signed Marietta [M.E.W. Mary Etta] Williams who on oath deposes and says that:

- 1) She is black, female and is over the age of 21 years. She resides at 147 Kershaw Street, Aiken, South Carolina.
- 2) Her last child [M.E.W. Eugene Williams M.E.W.] was born on June 22, 1973, and she was sterilized thereafter by Dr. Clovis Pierce who was the attending physician.
- 3) In July, 1973, she met with a number of individuals including Edna Smith at a meeting held at the office of Mr. Gary Allen. Mr. Allen had seen her prior thereto and informed her that the meeting was for the purposes of discussing sterilizations performed by physicians in Aiken County and remedies available to women who had been sterilized, including suits for damages against the doctors involved. Desiring to learn more about her legal

rights and remedies, if any, she attended the meeting and while there met Edna Smith for the first time.

4) At that meeting or during conversations after the meeting, Edna Smith [sic] explained to her what her rights and remedies were as far as her sterilization was concerned, and informed her of her right to bring an action for injunctive relief and damages. Edna Smith did not, however, attempt to persuade or pressure her to file a law suit or offer to represent her for a fee or otherwise.

5) During July, 1973, her child was critically ill with dehydration and she had been informed by her doctor that there was danger of the baby's death.

6) Following the July, 1973, meeting at Mr. Allen's, and during the time of her child's illness, she went to Dr. Pierce's office for a regularly scheduled medical check-up. Present at Dr. Pierce's office on that occasion was attorney B. Henderson Johnson, Jr. She had not requested Mr. Johnson to be present but understood that he was present in his capacity as Dr. Pierce's attorney.

7) Mr. Johnson stated that he knew she

had had prior contact with Edna Smith and wanted to know whether or not she intended to involve herself in any litigation against Dr. Pierce concerning her sterilization. She explained that she was so concerned about the health of her child that she did not have time to worry about any law suit, whereupon she was asked by Mr. Johnson to sign a statement which he had with him at that time, disavowing any interest in any law suit involving her sterilization by Dr. Pierce. She signed the statement and showed to him a letter she had received from Edna Smith involving prior conversations they had had concerning her sterilization. At Mr. Johnson's request, she notified Edna Smith, using Dr. Pierce's telephone, that she did not wish to bring a law suit over her sterilization.

8) Mr. Johnson has, on occasions in the past, represented her in various matters.

9) This statement is freely and voluntarily given.

s/ Mary Etta Williams
MARIETTA [M.E.W. Mary
Etta] WILLIAMS

[November 7, 1974]

[Jurat omitted in printing.]

EXHIBIT R-3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Civil Action No. 74-475

JANE DOE and MARY ROE, on)
their own behalf and on)
behalf of all others simi-)
larly situated,)

Plaintiffs,)

vs.)

CLOVIS H. PIERCE, M.D.;)
GEORGE A. PODA, M.D., indi-)
vidually and as Chairman of)
the Board of Trustees of)
Aiken County Hospital;)
J. SAM NESBIT, individually)
and as Administrator of)
Aiken County Hospital;)
RICHARD T. POORE, indivi-)
dually and as Director of)
the Department of Social)
Services of Aiken County;)
R. ARCHIE ELLIS, D.D.,)
individually and as State)
Commissioners of the Depart-)
ment of Social Services;)
AIKEN COUNTY HOSPITAL, a)
corporation; and their)
successors in office,)

Defendants.)

Deposition of Mary Roe (Shirley Brown)
taken before Jerlyn B. Hutto, Notary Public
in and for the State of South Carolina, at

the United States District Court House,
Grand Jury Room, Charleston, South Caro-
lina, commencing at 12:00 noon on Septem-
ber 24, 1974.

* * * *

[20]

JUDGE BLATT: Let the record show that
the Hearing was held down in Charleston so
that if anything developed that hadn't
developed in the past that the Court could
maybe assist the attorneys and wouldn't
have to go over and over these depositions.
The Court has been advised that the plain-
tiff Mary Roe, her counsel has objected to
two questions. The first question was
what was said in conversation that took
place in the presence of the plaintiff
Mary Roe and three attorneys, Mr. Buhl,
and who was the other two attorneys?

MR. LEWIS: Edna Smith and Gustau(?).

JUDGE BLATT: Gary Allen and a Miss
Gloria Steiner from New York who is a
magazine correspondent. The Court feels
that the defendant ... the plaintiff's
attorneys raised the attorney-client re-
lationship of confidentiality because the
attorneys were there. Having been familiar
with the case the Court feels that possibly

the presence of Gary Allen would not waive that relationship since he had been the father confessor, that's a good word to the plaintiff's since the suit had [21] began in assisting them and helping them. So the Court feels that the presence of the reporter or magazine editor from New York, although a friend of one of the lawyers and supposedly there to assist in the investigation would destroy the confidentiality of the relationship, therefore, directs the witness to answer that particular question. I don't know who proposed the question. Of course, the record will show that you have your objection.

Q. (By Mr. Smith). Mrs. Brown, I will repeat the question. During the meeting that took place in January of 1974 at the home of your mother, what was discussed at that meeting? A. What was discussed ... we discussed sterilization. We discussed what happened at the hospital and ...

Q. Approximately how long did the meeting last? A. It last about two hours.

Q. About two hours? A. Yes.

Q. And the only topics were discussed were sterilization. A. Mostly, yeah.

Q. Was the discussion of sterilization as it affected you? A. Yes and how I felt about it.

[22] Q. Do you remember any of the particulars of the conversation? A. Any particular thing... (Nodded negatively.)

Q. Did all these people participate in the discussion? A. Yeah, they talked to me and they talked to my mamma, and asked her how she felt about it.

Q. What were your feelings at this time, Mrs. Brown? A. Well... I told them I didn't like the idea of it. I thought he was pretty darn dirty...after I had paid him part of his money and my insurance was going to pay the rest and he refused to see me after having the baby and that time the sterilization.

Q. Was the bringing of a lawsuit discussed at this time? A. They asked me did I think about it. Did I want it...to file suit against him. I told them, "Yes."

Q. Do you remember who asked you that question? A. No, I don't remember which one asked me.

Q. Did one of these people present ask you if you wanted to bring a lawsuit? A. Did they ask me?

Q. That's right. A. One of them said it. They asked me was I thinking about it and I told them yes.

JUDGE BLATT: All right, now let the record show that the other question presented to the [23] Court was the question pertaining to this witness as to how she came to meet or to know Edna Smith and so this record will be clear and recognize that the Court may clear it some that this question probably goes to the issue of solicitation. This Court feels in its posture of the American Civil Liberties Union has a duty and an obligation under the manner in which it operates to seek out and help those who it feels are not able to help themselves, either their lack of knowledge or lack of funds, the Court finds no fault with the situation out of which this suit arose with the attorneys connected with the ACL, in contacting if that in fact did happen, the plaintiffs but the Court feels that the issues of contact or solicitation does go the question of validity or the appropriateness of a class action. Because of that and only because of that this Court feels that it is an appropriate question to ask this plaintiff.

Q. (By Mr. Smith). Now how did you happen to meet with Miss [24] Smith, Mrs. Brown? A. Well, I talked to Gary about it...what had happened and he asked me did I want someone to come and talk to me from the ACLU. I told him it would be okay, yes. And he sent her down.

Q. When was this? A. It was right after that...right after it happened in October or November.

Q. She came down in October or November? A. Yes.

Q. Did you meet with her with Mr. Allen? A. No, not then. Not the first visit, no.

Q. Physically where did you meet? A. At my mamma's house.

Q. She came to your mother's house? A. Yes.

Q. And at that time did you discuss the case. I want to know what you talked about. Was the case discussed at that time? A. Case....

Q. Lawsuit? A. I told her what had happened in the hospital.

Q. You did not personally contact her before she came to your house? A. No, I didn't.

[25] Q. Did you ever receive any letter from Miss Smith prior to her coming? A. On the second visit they wrote me and said that they would be down.

Q. How about prior to the first visit?

A. No.

Q. She just showed up one day? A. I talked to Gary and he said that he would send someone down to talk to me. She came down to talk to me and she called and asked the way to the house.

Q. She called prior to coming? A. Yes.

Q. And did she call soon after calling?

A. She came about the next week or the same week I think.

Q. And that was in October or November? A. Yes.

Q. Between your initial meeting with Edna Smith and the meeting in January with other people at your mother's house, did you have any reservations about bringing a lawsuit? A. Any reservations...what do you mean?

Q. Had you made up your mind? A. Yes, I talked to my mamma about it. Well, at first she told me not to do it. She didn't want any trouble. So later I talked to her and she still didn't want me to do it, I just [26] went ahead on because I didn't

like it.

Q. Thank you, 'mam, that's all the questions I've got.

* * * *

[See explanatory note, supra, A21.]
 IN THE DISTRICT COURT OF THE UNITED STATES
 FOR THE DISTRICT OF SOUTH CAROLINA
 AIKEN DIVISION

JANE DOE AND MARY ROE, on	)	C/A 74-475
their own behalf and on)	
behalf of all other simi-	)	<u>TRANSCRIPT OF</u>
larly situated,)	
	)	<u>EXCERPTS OF</u>
Plaintiffs,)	
	)	<u>HEARING</u>
vs.)	
)	
CLOVIS H. PIERCE, M.D.,)	
et al,)	
)	
Defendants.)	

At Columbia, S.C.

May 10, 1974

BEFORE:

Honorable Sol Blatt, Jr.,
 United States District Judge.

x x x x x

MR. GOOLSBY: I don't know whether there have been some letters written to Jane Doe or Mary Roe in this case or not, but I do think the existence of this letter should prompt an inquiry by this court to determine if in fact this case has been solicited. I don't know whether it has been or not. I think the court [2a] should determine whether or not there is

a case in controversy. In fact, I might point out that Dr. Wedlock would not answer any questions that were asked him concerning whether or not these two plaintiffs received any such letters. He refused to answer the questions.

MR. SHAW: Your Honor, yesterday I served a notice to take Mrs. Edna Smith's deposition. I realize what you have said with respect to a motion to compel Dr. Wedlock to answer these questions. He refused to answer the questions. You state that no motion to dismiss has yet been filed, but Dr. Pierce's time for responsive pleadings has not yet run. My point is that the claims have not been properly put together, or there indeed is not a significant class made out. Of course we don't have the information to file a motion. That is why I kind of wanted to have an understanding of your position and some ground rules laid down so we could take these depositions and get some answers fairly soon.

THE COURT: Certainly you have the right to take the depositions.

MR. BRADLEY: I just want to respond to what Mr. Goolsby said. I don't believe

that whether or not the case was solicited has any bearing on the merits of [3a] the case. That is no ground for any dismissal or any other action.

THE COURT: I haven't run into that. There might be some action against soliciting.

MR. BRADLEY: We could file briefs on it if your Honor would like us to.

THE COURT: If that is a question, I think it should be raised, Mr. Goolsby, by way of a motion. I think you should make that contention in the form of a motion, so that we can review the law on it and determine if solicitation -- other than being improper conduct on the part of the attorney -- has got anything to do with the merits of the case. Frankly, I have never run into that proposition.

MR. GOOLSBY: When we got the letter, I just felt that we should bring it to the Court's attention.

THE COURT: I am glad you brought it to my attention. Insofar as the litigation itself is concerned, I don't know what effect that would have on the right to proceed with the litigation.

MR. GOOLSBY: We can make the motion.

THE COURT: If I were to decide that it had no bearing on the litigation itself, you may or may not want to bring the letter to the attention of the appropriate authority that is set up to handle such [4a] matters.

MR. GOOLSBY: Dr. Wedlock repeatedly refused to answer questions, and we have not ourselves given notice to take the deposition of Edna Smith. Mr. Shaw didn't tell me until this morning that he wanted to do so, and we wanted to know what your Honor's reaction was to this before we proceeded.

THE COURT: My reaction to what now?

MR. GOOLSBY: Which way to proceed with respect to any solicitation. You suggested a motion, and that is the procedure we will follow.

THE COURT: I suggested a motion, and that is the way you should proceed if you want to move that some solicitation would bar the bringing of the suit. I have never researched that issue. I have never had that issue before me before. I probably have more to do with the conduct of the lawyer once the suit is brought. What effect solicitation would have on the suit,

I am not sure.

x x x x x

THE COURT: If you determine that that is the law, you are going to have to move to dismiss the suit because of improper solicitation, using the letter, [5a] if solicitation is the basis for your motion. If solicitation becomes an issue in the case, on the right to bring the suit, then I think we would go into the question of whether they would have to answer the questions, upon a hearing on your motion. I think he is correct, that solicitation has nothing to do with the right of the plaintiffs to bring the suit. Then solicitation would be an issue before other appropriate authorities and not before the court.

x x x x x

THE COURT: Is there anything else from any of the defendants?

MR. SHAW: Your Honor, there is only one thing that I would desire to make sure that I have got our procedure right about these depositions. Am I supposed to make motions to require them to answer the questions?

THE COURT: I understand that Mr. Goolsby comes into court and moves orally to dismiss this action because there has been active solicitation, and I told him to file the motion. Active solicitation might subject the person soliciting to a criminal procedure or it might subject them to disciplinary [sic] action by the [6a] appropriate legal committee, but it has got nothing to do with the case itself.

I certify that the foregoing is a true and correct transcript of my notes.

s/ Doris C. Appleby
Official Court Reporter.

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REPORT OF THE PANEL OF BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

This report is found in the jurisdictional statement beginning at page 15a.

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OPINION OF THE SUPREME COURT OF SOUTH CAROLINA

This opinion is found in the jurisdictional statement beginning at page 1a.